Public Utilities

FORTNIGHTLY

July 25, 1929

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Public Utilities Fortnightly

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PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY; a magazine dealing with the problems of utility regulation and allied topics, including the official decisions of the State Commissions and courts; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication. Published every other Thursday; 75 cents a copy; $15.00 a year; with bound volumes and Annual Digest, $32.50 a year. Editorial and advertising office, Munsey Building, Washington, D. C., circulation office, Duffy-Powers Building, Rochester, N. Y. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.

Pages with the Editors

In the midst of all the current political discussion about "farm relief," one of the most important as well as the most practical measures for alleviating the lot of the agriculturist has been crowded out of the newspapers entirely.

* *

And that is the project of bringing electricity to the farm—and bringing it in abundance, not merely to the tiny percentage of farms that now receive it in limited measure, but to every farm in the country.

* *

While the politicians have been ignoring this vastly significant economic project, the agricultural colleges and the electric power companies and various commissions have been quietly making a scientific and intensive study of it.

* *

Governors of various states have been appointing special committees to make surveys of the situation, to find out how the plans for "rural electrification" may be best carried out.

* *

Rural electrification really began some years ago at Red Wing, Minnesota—where the first experimental rural line in the world was constructed.

* *

So successful were these experiments that similar enterprises were established in twenty-three other states.

* *

It was this famous Red Wing station which gave both the agricultural as well as the light and power utilities an entirely new conception of the tremendous possibilities of electricity on the farm—not merely for lighting purposes and for operating such minor household devices as fans, dish-washers, ice-boxes and electric ranges, but more particularly for operating the major farm machinery.

* *

Few people realize to what extent this introduction of electrical power on the farm has already accomplished; fewer still have any conception of the tremendous economic changes that are likely to ensue when the plans for electrifying our farms are carried out on a really comprehensive scale.

* *

This important subject will be treated in the next number of Public Utilities Fortnightly, in the first of a series of several articles that will appear during the coming months.

* *

This first article will be contributed by Charles F. Stuart.

* *

Mr. Stuart was the "inventor" of the Red Wing experimental station. He served several years as a member of the Rural Electric Service Committee of the National Electric Light Association, and since July 1, 1927, has served as Chairman of that Committee; incidentally, he is a member of the National Committee on the Relation of Electricity to Agriculture.

* *

Consequently, Mr. Stuart knows what he is writing about. His article points out not only the progress that has already been made, but the part that the State Commissions are playing in this economic drama that promises to bring about far-reaching changes in the lot not only of the farmer but of the rest of us.

* *

Ben W. Lewis, whose article on "Going Value" appears on pages 77-84 of this issue, is a frequent contributor to economic and legal periodicals.

* *

He received his A. B. degree from the University of Michigan in 1922, and his Ph.D. in 1926. From 1922 to 1925 he was instructor in economics at his alma mater; from 1925 to 1927 he was assistant professor of economics at Oberlin College, and since 1928 he has been associate professor at the same institution. He is now on a leave of absence—and has been using his time not only in studying law at the Harvard Law School, but in lecturing on the subject of public control of industry.

* *

Ellsworth Nichols, whose article on "The Cost of Scenic Beauty—in Kilowatt Hours" appears on pages 87-91, is a lawyer in Rochester, New York, and associate editor of this magazine. He has written much on this subject of regulation.

* *

Francis X. Welch, whose article on the work of the Public Service Commission of Montana will be found on pages 94-103, is the contributing editor of Public Utilities Fortnightly.

(Continued on page VIII)

AMONG the especially interesting cases noted in the "Public Utilities Reports" section of this issue of the magazine, the following may be worthy of special note:

* *

THE valuation of utility property, as has often been stated, is not a mathematical proposition; there must be an intelligent judgment based upon many factors. The Missouri Commission discusses the point, in the case of the Laclede Gas Light Company (see page 561), that an intelligent forecast must be made as to probable price and wage levels in determining a rate base.

* *

THE absorption of losses by one utility service operated in conjunction with a less profitable service has occupied the attention of several Commissions. This matter comes up before the Arizona Commission in *Re.* Arizona Power Company (see page 566).

* *

THE contention was made in a Pennsylvania case that the company should be charged interest on funds collected as rates for depreciation but used for capital extensions (see page 568). This contention did not meet with the approval of the Pennsylvania Superior Court.

* *

WHEN a municipal plant contracts to buy its energy from a private company, it cannot treat the contract obligation lightly. The New York Commission has refused to allow a city under these circumstances to construct and operate a generating plant of its own (see page 580).

* *

MUNICIPAL plants are not entirely free from regulation in many states. The Wisconsin Commission (see page 612) has recently dealt with the rules applicable to municipal plants in regard to extensions.

* *

No matter what may be the basis for rates, there has been constant opposition to refinancing utilities because of higher valuations based on reproduction cost. The California Commission (see page 617) lays down the rule that a public utility cannot issue securities to cover the difference between original cost and reproduction cost.

* *

PUBLIC UTILITIES FORTNIGHTLY is not only read individually by the utility executives to whom copies are routed, but it is now being read collectively and discussed at meetings.

* *

"JUST a few days ago," observes the editor of *The Pacific Telephone Magazine* in his latest number, "we happened in on an interesting group meeting composed of President Pillsbury and Vice-Presidents Powley and Reagan. Discussion was centered on a broad policy of business obligations to the public, and a very interesting article in the May 30th issue of PUBLIC UTILITIES FORTNIGHTLY, from the pen of Earle H. Morris, Chief Engineer of the Board of Railroad Commissioners of North Dakota, was being read and discussed. All agreed that the men and women of our industry would never be content so far to neglect our obligations to the public as to be chargeable with the shortcomings outlined in Mr. Morris' article.

* *

"WE believe that Mr. Morris' article is of such a high degree of excellence, correct in conception and statement, that we have taken the liberty of reprinting it in its entirety in this issue of the magazine."

* *

MR. MORRIS' excellent article is being reprinted in numerous periodicals, and is thus extending its influence far beyond the confines of PUBLIC UTILITIES FORTNIGHTLY—a destiny that many of our articles are, happily, meeting.

* *

"I disagree entirely with everything you have said but I will defend to the death your right to say it."—VOLTAIRE TO HELVEPIUS.

* *

THAT the policy of publishing articles on both sides of controversial questions within the field of regulation is meeting with the approval of the readers of PUBLIC UTILITIES FORTNIGHTLY is evidenced by scores of letters received from public utility executives, publicists, economists and commissioners.

* *

OBVIOUSLY, the editors cannot agree with all of the conflicting views expressed by the contributors. But we can all agree on the policy of giving each spokesman the opportunity of presenting his case.

* *

HERE, for example, is a typical endorsement of this policy:

* *

"THE editorial policy of PUBLIC UTILITIES FORTNIGHTLY, in the matter of conducting such magazine as an open forum for the discussion of both sides of controversial questions within the field of regulation is contributing much to the information of the increasing number of readers of the magazine with respect to public utilities' policies and practices. It will give added confidence in such discussions by readers of the magazine, if the editors will invite contribution by those representing the extreme views as well as those whose views are less extreme, on both sides of such questions. There is no safety for public utilities or any other business except that of fact and truth and reasonable use of both fact and truth."

—HUGH WHITE,
Pres., Alabama Public Service Commission.

* *

THE next issue will be out August 8th.

—THE EDITORS.

JULY

Utilities Almanac

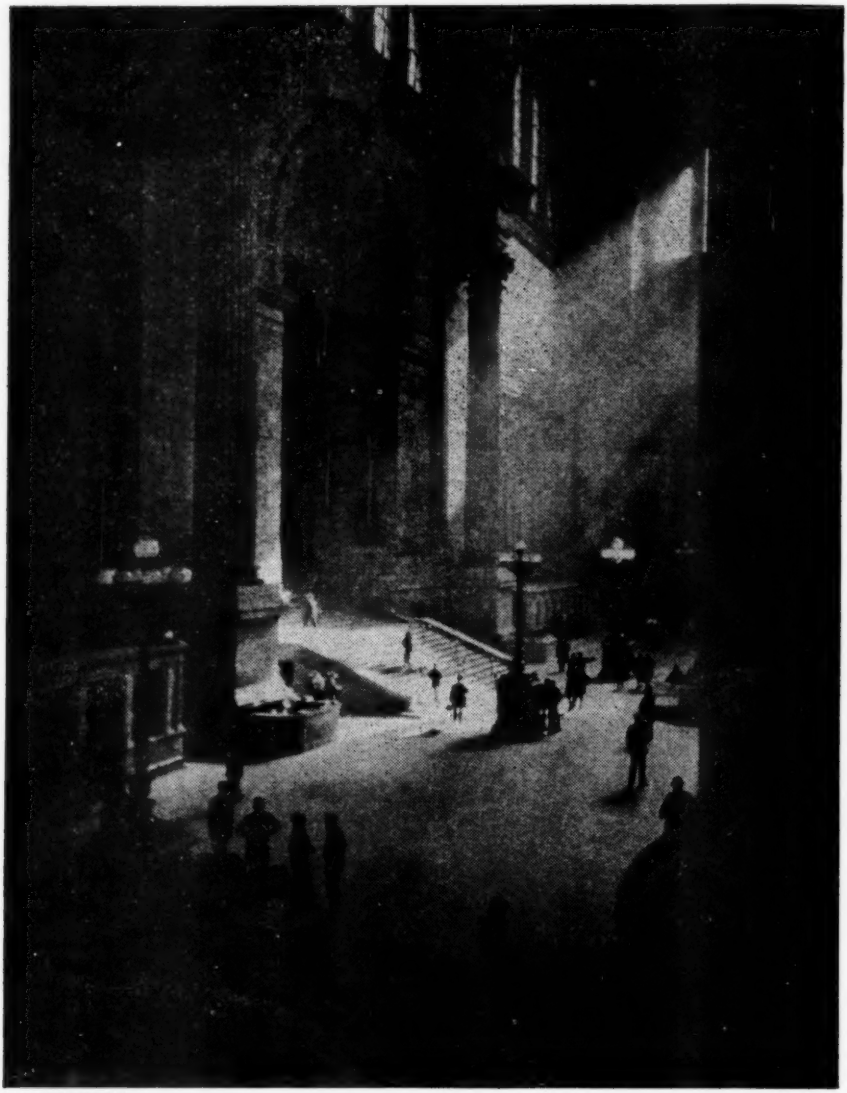
Reminders of Coming Events — *Notable Events and Anniversaries*

25	T*h*	Rapid transit started in New York when JOHN CLAPP, a tavern keeper, advertised "a hackney coach for the accommodation of all persons wishing to hire same;" 1696.
26	F	¶*Tomorrow the National Association of Railroad and Utilities Commissioners will open their convention at Glacier National Park, Montana.*
27	S*a*	Transoceanic communication began when CYRUS W. FIELD completed the Atlantic cable between the U. S. and England, 1866. GEO. B. CORTLEYOU born, 1862.
28	S	The first official U. S. mail car was put into active service, 1862. Radio communication between U. S. and Japan was established, 1915.
29	M	Employees of the surface and elevated lines in Chicago started a strike and the taxis and improvised busses carried the city's 5,400,000 fares, 1919.
30	T*u*	The Philadelphia & Reading Railroad Company purchased at auction, for $150,000, the plant of the Reading Iron Company, which had failed for $1,000,000, 1889.
31	W	The use of horses is resumed for drawing the cars over the Mohawk & Hudson tracks after unsuccessful experiments with the locomotive *"DeWitt Clinton,"* 1831.

AUGUST

1	T*h*	Another advance in rapid transportation was made when CLARENCE CHAMBERLIN made an airplane flight from the deck of the *Leviathan* to New York, 1927.
2	F	The first newspaper dispatch was transmitted across the Atlantic, 1907. ALEXANDER G. BELL, inventor of the telephone, died, 1922.
3	S*a*	CHRISTOPHER COLUMBUS blazed the trail for transatlantic transportation when he sailed from Palos, Spain, at 8:00 A. M. for America, 1492.
4	S	So mysterious and phantom-like was gas regarded by its discoverer, VAN HELMONT, that he named it after the German word *"geist,"* meaning spirit, 1609.
5	M	The modern desk telephone was first put into use, 1886. The idea of using railroad tracks as current conductors was patented, 1841.
6	T*u*	The first commercial business to be transacted by means of radio communication were conducted through the Signal Corps station, U. S. A. in Alaska, 1904.
7	W	The dangers of modern travel were brought to public attention when Indians wrecked a Union Pacific train near Plum Creek, Omaha, and scalped the crew, 1867.

"The company furnishing the public utility service has more interest in the community than any other institution in it."
—P. S. ARKWRIGHT



From a photograph by D. J. Ruzicka

Citadels of Service

No. 1: THE PENNSYLVANIA STATION, NEW YORK

"Bring me men to match my mountains,
"Bring me men to match my plains,
"Men with empires in their purpose,
"And new eras in their brains."

—SAM WALTER FOSS

Public Utilities
FORTNIGHTLY

VOL. IV; No. 2 JULY 25, 1929

The PUBLIC UTILITIES AND THE PUBLIC

A PROPOSAL by a New Jersey gas utility to adjust its rate schedule from a flat rate basis to one more nearly paralleling the production cost to the company has been characterized by former Supreme Court Justice of that state James F. Minturn in his brief as counsel for the Hudson municipalities opposing the change as contrary to the fundamental constitutional principles of uniformity of taxation.

Judge Minturn's position is somewhat novel. The analogy between paying utility rates and paying taxes is not original. But the Judge is not merely making an analogy. He treats the two as an absolute legal parallel; —in other words, rates are a form of taxation and, hence, must be governed in accordance with the rules generally covering such matters. He says in his brief:

> "In every other department of taxation and assessment under our form of Government, equality of taxation or equality of assessment, so far as rates are concerned, has always been uniform, and our Constitution of Government necessarily must be uniform."

He then argues that the proposed readjustment is a change from a flat rate to what he calls a "dual rate" as between small and large users and that this change is repugnant to rate equality. The company, on the other hand, had charged that the old rates were discriminatory, imposing too great a burden on the large users and not making the small user pay his share.

"If it be conceded that such discrimination exists," the brief continues, "it would seem that the persons to present this inequitable condition to the Commission are the consumers themselves who suffer financial disadvantage by reason of the discrimination and not the company."

Judge Minturn then points out that the proposed change increases the cost to about 70 per cent of the gas customers and decreases it to about 30 per cent. He says such a division is arbitrary.

"If the Commission has the right to make such a division," Mr. Minturn says, "it may, with equal propriety and justice, arbitrarily select a class made up of 90 per cent of the community and tax them at one rate, and impose a lesser rate upon the remaining 10 per cent of the consuming public."

The investigation by the New Jersey Commission has continued several months and included the engagement by the Commission of a Chicago engineering firm to make an independent inquiry. With some modification the Commission permitted the adjustment. In its opinion, answering many of the contentions of Judge Minturn, it is said:

> "Not only are the present rates discriminatory as between different classes of customers, but they have serious consequences for the company. Under modern social and industrial conditions, the gas industry has practically lost its lighting business and is dependent principally upon the use of gas as fuel. Here it must compete with other fuels, such as oil and coal. And so the cost of gas must be placed more nearly on a competitive basis in order to prevent loss of business and to create an additional demand for gas.
>
> "In the Board's opinion, the general form of the proposed schedule is not unreasonable, although the exact rates proposed for the first block are unreasonable.
>
> "The schedule of rates suggested would bring to the company on the basis of 1928 sales of gas no more gross revenue than is realized under the present rates.
>
> "It should be emphasized that the charge of $1 for the first 400 cubic feet is imposed on each and every consumer, large or small, and that each customer must pay the identical rate for all gas consumed by him at the various block rates. Contrary to the opinion expressed by some parties at the hearing, the record does not show that the very small consumers are necessarily poor people."

New Jersey, as a result of the decision, will become one of the pioneers in the field of general promotional gas rates. Mr. E. W. Wakelee, representing the utility, and its vice-president, said:

> "The schedule we proposed was worked out after a thorough study. It is a schedule which we feel is essential, unless recourse be made to a general rate increase. In recent years there have been cuts amounting to millions of dollars in the electric rates. Why? Because the rate structure in that industry has been a proper and scientific one. We are asking now a scientific rate for gas. The question before the Commission is whether the gas industry is going to take an upward or downward path."

The statement of Judge Minturn regarding taxation and utility rates is somewhat surprising in view of reported authority. Some months ago a newspaper reporter, apparently rather well informed generally, compared a proposed room rate by an electric utility with an ancient British law taxing the number of windows in English residences. The journalist then argued that since a utility has no lawful authority to tax its patrons, the room rate was an unlawful usurpation by the company of a gov-

ernmental prerogative of taxation.

It seems almost elementary to set forth the distinction between a tax and a rate. The former is a compulsory requirement for the payment of a specific sum levied by lawful authority upon all persons or things of a specific classification for the establishment or promulgation of governmental purposes. The latter is a charge by a private company or a governmental body acting in its proprietary capacity for the rendition of a specific service voluntarily received by the party to be charged.

Even a municipal utility may not impose taxes as such for payment of service. In the absence of special statute even municipal utilities cannot put liens on a patron's premises for failure to pay for service.

A utility subscriber is no different in this respect from a man who buys coal or bread. The utility has sold him something—something which he has agreed to take, therefore, he must pay for it. Where is the governmental purpose in this? If the coal man charged his patron more for a ton of coal divided into four deliveries than for one lump delivery, no one would question the distinction made.

Gas companies deliver the energy converted from many tons of coal. It has certain fixed charges regardless of consumption. May it not ask the small subscriber to pay his fair share of the distribution expense? The connection between this and discriminatory taxation appears somewhat obscure.

The Attraction of Capital in the Case of a Utility Reaching the Point of Diminishing Return

It has happened that some utilities have been unable to make a fair return no matter how much their rates may be increased. As one Commissioner put it: "The Commission can regulate rates but it cannot regulate the law of economics."

To a utility in such a situation, a rate increase might often do more harm than good, decreasing the revenue yet available by driving away the consumers continuing to take service.

Such a utility is sometimes said to have reached "the point of diminishing return." It is merely an inability of the particular business, utility or otherwise, to cope with adverse economic conditions. What is done where a utility has reached a point of diminishing return? A utility cannot ordinarily just close shop and go through bankruptcy as a private business usually does under such circumstances. Utility service must go on if possible. It cannot suspend operations without Commission approval and such approval is given reluctantly, only in cases where the utility, after exhausting every possible means of raising revenue, is positively losing money. As long as utilities can barely pay for their way they are asked to go on.

In some states the Commissions have left the question of whether or not the point of diminishing return

has been reached with the utility's management. The position justifying this policy is that the managers of a utility would be the first to know whether a rate increase would do it any good and the last to ask for it if it would do the utility more harm than good. As long as a utility can prove its inability to make a fair return under existing rates, such Commissions will grant rate increases as a matter of right. Whether the increase is economically ill-advised is left to the company's discretion.

In other states, however, the Commissions have a different policy. Public service is so important to the public that its continuance should not be jeopardized by ill-advised although well meant rate experiments. Such has been the policy, for example, of the Maryland Commission.

In the rather well known proceeding of the Baltimore Street Railway for a 10-cent fare, the Maryland Commission practically said this to the utility:

"If your business were in a good healthy condition, no doubt you would be entitled to an 8 per cent return. But you can't earn 8 per cent no matter what rates you charge. We have studied your business and find that the most you can make and still keep your remaining business intact is about 6.26 per cent. If we let you charge the 10-cent fare, you will ruin what is left of it by driving away those who still use the service, and if you once ruin it we may have to let you discontinue it. Therefore, we won't let you ruin it but instead we order you to modify your increase to produce about 6.26 per cent return."

The Maryland court of appeals sustained this view of the Commission.

More recently in New Jersey a water utility, losing money, asked for a 100 per cent increase. Evidence showed that the community was growing slowly; that domestic service was inadequate; that fire protection was of little value at all; and that any increase of sufficient size as to produce, on paper, revenue enough to maintain better service would defeat its own end by driving away established patronage. The municipality said a 25 per cent increase was all that was warranted under such circumstances. The New Jersey Board said:

> "The Board is of the opinion that this company does not need a return at the present time sufficient to attract capital as is the case with many other utilities serving rapidly growing communities. Because of the character of service rendered, particularly for public fire protection, and the possibility of the company losing business if its rates are increased 100 per cent as claimed, an increase of about 60 per cent would be more in accordance with the value of the service and under the circumstances would afford a reasonable return."

Also of some significance is another sentence of the opinion failing to consider any return: "It is the opinion of the Board that the above revenue will permit the company *to operate without loss.*"

Re Lambertville Water Co.

Promotional Power Rates to Special Industries Held Not to Be Discriminatory

WHEN is a discrimination not a discrimination? Or, to be more serious, when is a discrimination in fact of such a character as to fall short of being an unlawful discrimination? We find that utility laws generally throughout the United States, as well as common law of our British ancestors, prohibit *unreasonable* or *undue* discrimination and preference. But unless it is unreasonable or undue, it is not unlawful. Lines must be drawn somewhere and it is hard, indeed, to draw them so that they do not cut across somebody's legal rights.

For example, a statute of limitation says no suit may be brought after five years. The man who waits four years and three hundred sixty-four days has as much right to sue as a person who is most prompt in the assertion of his rights whereas the man who wasted one more day is forever barred. Is this preference? Theoretically it is. But it is neither unlawful nor unreasonable. Lines as stated must be drawn somewhere.

Speaking of utility rate revisions, the New Jersey Board of Commissioners once said:

> "In any revision of rate schedules, especially when such schedule effects the consolidation of two or more classes of service into one schedule, there may be some customers who suffer prejudice thereby, but if this prejudice be not *unreasonable* and the greatest good is afforded to the greatest number, such prejudice should not stand in the way of an otherwise desirable form of rate schedule."

The determination of discrimination in utility matters often involves nice distinctions. The Colorado Commission has recently observed that a number of Commissions have held that, irrespective of the question of the cost of serving the consumer and the question of whether his energy is taken during off peak or on peak periods, one consideration that is important is whether it is necessary to make a low rate to large consumers in order to prevent them from generating their own energy.

It was pointed out that there are certain fixed charges which a utility has, and that if the large customers are lost the remaining consumers will have to bear not only all of the fixed charges but also the small profit that the utility may earn in serving the large customers; that, therefore, the smaller customers instead of suffering from the lower rates to the larger ones are thereby benefited.

With this in mind, the Colorado Commission was confronted with a rather close case. The Public Service Company of that state was asking authority to give a special reduced power rate to certain mine smelters.

There are at the present time only two mine smelters in Colorado. One is situated in Leadville, the center of the district in which all of the parties involved were operating. Another is in Durango, which is situated in the extreme southwestern corner of the state. If ores are shipped to that smelter they must be shipped over a long, circuitous route leading through northern New Mexico, and when refined or smelted the products of the

smelter must come back over the same route. Many other smelters, formerly in operation in Colorado, have ceased operations and have been dismantled. It is obvious that if the smelter in Leadville cannot operate profitably it will go the route of many others, leaving the greater portion of the mining territory in Colorado unserved except by the smelter at Durango and another situated near Salt Lake City. It is quite a question how many of the ores could profitably be shipped to those smelters.

It was likewise obvious that if the mines having to pump water and being called "wet mines" cannot purchase their energy at sufficiently low rates, those that are now operating will be compelled to cease and those that are contemplating resumption of operations will abandon their plans therefor.

While the Public Service Company assumed an attitude of neutrality, its rate engineer took the stand and made what was considered a *prima facie* justification of the classification in question. He testified in substance that in view of the company's "past history with that class of business," it was necessary to make the classification in order to insure that "these customers could keep on operating."

There was no contention that the cost of serving the smelter and the wet mines was any more than for other mines. The load factor and other attributes of the companies not affected compared favorably with those of the companies to be benfited by the proposal. Was this unlawful discrimination?

The Colorado Commission, after reviewing much authority pro and con, decided that the preference was justifiable. The opinion states:

> "Of course, it is appreciated that such a classification as is attempted here to be made does not rest on any such basis as the classification of charitable and public institutions. In making the latter classification the purpose usually is not to make a rate that will insure the getting of business, but merely to be generous to certain institutions. It is also clear that doubtless it would not be practicable and lawful to attempt further classification of wet mines and smelters by making various gradations, based upon nice distinctions and shades of difference in costs of operations, etc. It is quite possible that some mines having to pump water could much more easily stand a high rate for energy than others. However, in making classifications the rate must apply to all in the class without any attempt being made to choose and pick from a class. . . . After careful consideration of the case, we are of the opinion in view of the common law, the general statutory and constitutional provisions of other states and the context of the Public Utilities Act of Colorado that the legislature did not intend to prohibit the making of reasonable classifications of consumers and reasonable differences in rates to the classes."

The attorney for the utility stated at the hearing that, even without allowing a special discount to smelters and the so-called wet mines, the utility was not earning a fair return and was, therefore, entitled to make a voluntary concession to some of its consumers. With this contention the Commission was unable to agree, stating:

> "If there is no basis for a proper classification, we are of the opinion that the giving of a lower rate to one

consumer than to another in the same class is an unlawful preference and discrimination, irrespective of the question of the return that would be realized if no concession were made."

Re Public Service Co. I. & S. No. 115, Decision No. 2248.

Court Upholds the Right of a Utility to Sell Merchandise

A COURT decision endorsing the right of a utility to engage in general merchandising activity has recently been handed down. The determination of this question was probably delayed because of the fact that the Commissions, as purely regulatory bodies, had no power to consider the corporate rights of utilities so engaged.

The only way this would normally arise would be by way of a proceeding by the attorney general of the state questioning such activity as beyond the chartered power of the company. That is the way it arose in Pennsylvania. The attorney general for the commonwealth, Thomas J. Balbridge, instituted a "quo warranto" proceeding, which is the legal form for questioning authority of disputed acts, asserting that the Philadelphia Electric Company, in selling electric appliances throughout the city of Philadelphia, was exercising powers and franchises not within its corporate grant or incidental or auxiliary thereto.

The matter was instigated by a manufacturer of electric refrigerators which were not handled by the utility. The complaint of this private company, which moved the attorney general to act, alleged that the utility's charter gave it no right to sell anything but electric current and that merchandising of appliances and devices consuming current was beyond its chartered corporate powers.

The court of common pleas of Philadelphia upheld the right of the utility to merchandise. It was observed that the corporate charter organized the corporation "for the purpose of supplying heat, light, and power by electricity to the public." The court was of the opinion that the grant was not a simple power to supply electricity, but authority to supply certain things produced by electricity. The opinion states:

> "Far from preventing the company from dealing in the converting devices needed, it would be our inclination to insist that it is part of its duty to furnish them to its customers. It is unimportant whether the converting device is supplied separately, by means of a sale or a bailing and a charge specially made for it, or whether the bill rendered the customer for the service includes also the use of the converting device."

Further down in the opinion occurs this succinct statement:

> "It is not wandering too far afield to point out, and it appears in the proofs, that in 1902, the industry in which the respondent was and still is engaged, was comparatively new. The public had not been educated with regard to the multitude of conveniences which the electric current will supply. To furnish the housekeeper with the electric current alone would have resulted in neither profit to the company nor convenience to the customer. What the latter want-

ed, and what the legislature intended to grant when it authorized the respondent to furnish light, heat, and power by electricity, was something more than furnishing the customer with the end of an insulated copper wire, that he did not know how to use, or had not the appliances to use. It was intended that he should have and the company should furnish the conveniences that could be obtained by the use of the electric current."

Commonwealth ex rel. Balbridge *v.* Philadelphia Electric Co. C. P. 4, No. 2766.

Giant Water Merger Disapproved

DIFFERENT types of utilities have many things in common with regard to regulation such as the duty to serve, the right to earn a fair return based on value of property, and so forth. But the policy of consolidation favored by many states will not always be applied alike to all utilities. Some months ago the Pennsylvania Commission, in refusing to approve a consolidation of water companies in that state, held that the supply and service of water is a peculiarly localized function, and that a consolidation of widely separated companies is not susceptible to the economic advantages usually accruing to such coalitions to that degree experienced by other forms of utilities more dependent upon mutual relationships, such as interconnected telephone and electric systems.

More recently, the Maine Commission has handed down a very important decision regarding the consolidation of water companies in that state. Fifteen different local water companies asked permission to consolidate with the Maine State Water and Electric Companies. The latter is not a public utility and neither owns nor operates any physical properties dedicated to public service. While it has a broad charter giving it the right to engage in a public utility business, it has never done so, and at the time of the proceeding was admittedly a plain holding company controlling the securities of twenty utility corporations.

The Commission pointed out that the holding company had done something a utility could not lawfully have done. It had purchased capital stocks of utilities, and issued its own securities for the purpose of obtaining the necessary funds without Commission approval. The Commission admitted that the holding company's conduct was lawful but said:

> "It seems utterly inconsistent with the spirit of the law, if not an evasion of its express provisions, that as a holding company it may purchase the capital stock of fifteen or twenty water companies and may issue, as the evidence discloses it has done in this case, nearly three million dollars par value of securities without Commission authority, simply because it was not a public utility, and immediately or shortly after, be recognized as a public utility and treated as such in consolidation proceedings, brought under the provisions of this same § 40 of the statute above quoted."

The Commission decided in view of the statutes of that state that it was not consistent with the policy of the state of Maine to recognize the holding company as a utility for the purpose of the proceedings. It was

further held that the water companies as such could not be benefited by a consolidation with the holding company. That greater economy or efficiency could be effected by group operation was seriously doubted by the Commission. The opinion stated:

"We think it is inimical to a sound public policy to permit water companies so widely scattered throughout the state, wholly incapable of being physically connected, entirely local in character, to become consolidated under the circumstances set forth in this case. The interconnection of groups of electric companies is recognized by Commissions generally as a logical step in the development and use of electricity to make available to the public a source of surplus power to be absorbed into the system and to be transported where there is need therefor. . . . Water service is not comparable at all with electric service, in that the source of water supply must be reasonably close at hand and serves a local use, while electric current can be exchanged freely over long distances, supplying communities far distant from the power plant. Connecting electric companies is natural, logical, and advantageous to companies and consumers alike—not so with water companies—there is no such comparison."

Another significant point in this important decision was the disagreement by the Maine Commission with the Maryland court of appeals on the question of consolidation. The Maryland court had held that the Commission should not refuse to approve a petition for consolidation merely because it was not shown that the public interest would be *benefited*. It is sufficient, said that court, if the proposal is not *detrimental* to public interest. Two Commissions from other states disagreed with the Maryland court, being of the opinion that public benefit must be shown as a condition precedent to consolidation approval. The Maine Commission lined up with the State Commissions on this point. It might also be noted that the Maryland decision was nullified soon after its publication by a statute directing the Commission to approve utility consolidations only where public interest can be shown to be benefited by the proposed arrangement.

Re Eastport Water Co. U–1046 et al.

Cutting In on Busses Brings Taxis under Regulation

THE word "jurisdiction" is a formidable one in the ears of most laymen. Its meaning, as betrayed by legal maneuvers, seems as varied as the forms of Proteus, that erratic magician who, we are told, changed his shape as freely as he changed his mind. Laymen frequently hear of an important case being dismissed at the end of a bitterly fought trial because the court "refused to take jurisdiction."

"Why," the average man is tempted to say, "didn't the court tell the lawyers that in the first place and save all the trouble."

Jurisdiction is so elusive that it frequently requires not only a trial but also much argument and deliberation for the court to decide whether or not it has jurisdiction. Without jurisdiction any act of the court or Commission is so much wasted effort. In civil cases, the jurisdiction

of a court is not created until all parties are properly brought before it—that is to say—until they have legal notice of the event. That is why one occasionally hears of an entire court proceeding being thrown out because investigation subsequently revealed that a party was served with a defective summons or warrant or wasn't served at all.

Jurisdiction of a Public Service Commission is usually delegated by statute but occasionally by the state Constitution. Its scope is limited to the matters set forth in the empowering law. For example, most laws enumerate the specific utilities over which a Commission has jurisdiction, such as electric, gas, sewer, telephone, bus, and ferry companies. But if this language alone were used, the jurisdiction would be inflexible and constant revision would be necessary to allow the Commission power over newborn utilities such as the aeroplane.

To cover this, many laws have a general delegation of power over "common carriers." That is such a general term that it embraces all forms of commercial transportation for hire. But there are many sharp distinctions and niceties to be observed. For instance, the taxicab, although generally speaking a common carrier, may not be a common carrier subject to most Commissions' rate-fixing jurisdiction because they do not run on a regular schedule over a fixed route between designated terminals soliciting indiscriminately passengers at a small fare. The taxicab is, therefore, different from a bus. It is an independent carrier serving only one person or party at a time. It is more like a chartered vessel in this respect.

A recent decision of the Illinois Commission has raised a serious question regarding the jurisdiction of such tribunals over the taxicab.

The United Motor Coach Company, operating busses over a regular route on a fixed schedule, complained to the Commission that some of these cab-drivers were making a practice of cutting in ahead of the regular scheduled busses during the rush hours when prospective bus passengers were standing on most corners, and soliciting patronage from these parties most of whom were bound for a more or less common destination.

Here is where the question of jurisdiction came in. What right had the Illinois Commission to do anything about it? The statute gave the Commission no authority over taxicabs as such.

The Illinois Commission assumed jurisdiction and ordered the cab drivers to cease competing in the manner stated. This was the theory upon which it assumed the rôle of taxicab regulation. The taxicab drivers, by indiscriminately soliciting patronage over a regular route at periodic intervals, had usurped the prerogatives of public utilities and were competing with the regularly authorized carrier over that route. In other words, they were operating as public utilities without having any right to do so. This, it was held, gave rise to the jurisdiction of the Commission, and once having jurisdiction, the Commission proceeded to clear up the matter.

Re United Motor Coach Co. No. 17586.

"Going Value"

Is its determination the factor on which the present system of regulation will succeed or fail?

By BEN W. LEWIS
ASSOCIATE PROFESSOR OF ECONOMICS, OBERLIN COLLEGE

COMMISSION regulation of public utilities is today on trial. It is not to be disputed, of course, that of all possible methods of controlling these businesses the system of regulation by State administrative Commissions has thus far gained the largest measure of public confidence; and this confidence seems, for the most part, to be fully warranted. None the less, we need occasionally to be reminded that any system of regulation is only a means to an end.

Public control is not instituted in order that a particular plan of regulation may be employed; it has no purpose other than to conduce to adequate service at proper prices. Alternative methods of control do in fact exist; and whether the prevailing system of regulation by State Commissions (with review by the judiciary as an integral feature) should be retained intact, modified, or discarded should be determined on the basis of searching and unceasing study of its relative capacity, currently demonstrated, to realize the ends which public control is meant to serve.

SIGNIFICANT evidence on this matter, as long as it has a common origin in the actual day by day functioning of the system, should be sought for in diverse directions. During the past several months the writer has had occasion to examine, critically, several hundred court and Commission cases on "Going Value." The decisions and opinions in these proceedings throw a great deal of light on the *theory* of going value, and it was with this possibility in mind that the task originally was undertaken.

As the study progressed, however, it became apparent that much was being disclosed that had bearing on the question of the efficacy of Commission regulation.

The valuation problem has long been a major concern of regulating agencies, and going value is, in many respects, an epitome of valuation. In the literature of the subject, including the opinions of the authorities, one finds in concentrated form virtually every point of view and attitude, every prejudice and preconception, which is to be found anywhere in the literature of regulation. Much of the real character of Commission control may be learned from an analysis and mature consideration of the manner in which courts and Commissions have dealt with this typical

regulatory problem. Recorded tendencies in the matter of going value allowances, and opinions given in support of going value decisions, are rich in the kind of material out of which reasoned judgments on the effectiveness of the prevailing system may be constructed. True, cases on going value tell only part of the story, but it is a significant part, and it is well told.

SINCE the theory of, and proper public policy toward, going value allowances in rate valuation constitute the point of departure rather than the goal of this article, an immediate statement of the writer's position on these controversial issues is required.

By "going value" is meant "the value arising from the established business."

In its usual form, going value amounts to little more than a renovation of the now discredited "good will"—a market or exchange value concept, based on earnings and clearly unsuitable for use as a factor in the determination of earnings for the future.

As an expression of the cost of establishing the business, going value takes on an air of respectability, but it is believed that these costs—which unquestionably must be taken into account—can best be handled through the medium of the operating expense accounts or the rate of return. Neither public policy nor the law (as yet) dictate the inclusion of going value in the base upon which public utilities should be allowed to earn a fair return. The position here set forth, at least with respect to the matter of policy, is decidedly at variance with that taken by the majority of courts and Commissions during the past two decades.* Certain tribunals, to be sure, have steadily manifested opposition to the recognition of going value in at least some of its forms, but for the most part the welcome extended to the item has been hearty and inclusive. The conditions under which these decisions have been pronounced have been varied, and the arguments which have been marshalled to their support have been wide in range and uneven in quality.

It will be the purpose of the remainder of this article to suggest the bearing of this authoritative disposition of going value upon the larger question of the real efficacy of the prevailing processes of public utility regulation.

A MAJOR reason for the employment of administrative Commissions in the process of regulation is the belief that such bodies, manned by specialists whose sole attention is centered upon a relatively narrow range of technical problems, will be able to display a high degree of scientific expertness.

Support for this belief, unfortunately, is not to be found in the general run of Commission determinations on going value. Going value is a technical problem. As it presents itself to the regulatory body in a typical rate-valuation proceeding, its suc-

* An elaboration of this position will be found in an article by the writer in 26 *Michigan Law Review*, 713 (May, 1928). See also 17 *American Economic Review*, 657 (December, 1927). It should be understood at the outset that the validity of the observations in the present article is not contingent upon the validity of the writer's conclusions on the subject of going value *per se*.

A Common Fallacy in Establishing "Going Value"

"THERE is a discouraging tendency among Commissions and courts to regard the existence of going value for public utility ratemaking as identical with the existence in ordinary commercial enterprises of a business value in excess of bare-bones value. The two concepts are technically quite distinct. The failure of regulatory authorities generally to perceive this distinction has occasioned the employment of a large quantity of energy in seeking a measure for rate-making purposes of an item whose very existence for those purposes is a matter of reasonable doubt. . . . This, it is submitted, is the very antithesis of proper administrative practice."

cessful solution demands the exercise of something beyond "good common sense" and "sound business judgment." As a problem of regulation, it lies quite outside the experience of persons untrained and unskilled in the science of regulation. This is not to discount in the least the value of the contribution which common sense and judgment make toward effective regulation; in this instance, something in addition is required.

One will search unrewarded through stack upon stack of going value opinions for anything approaching a scientific analysis of the subject. The condition is not universal, but it is true that every thoroughgoing searching analysis can be matched by a score of half-considered, unconvincing pronouncements, nicely worded and certainly of sufficient length, but disclosing no awareness of the technical difficulties inherent in the problem, and manifesting a degree of certainty quite unwarranted by the real situation.

There is a discouraging tendency among Commissions and courts to regard the existence of going value for public utility ratemaking as identical with the existence in ordinary commercial enterprises of a business value in excess of "bare-bones" value. The two concepts are technically quite distinct. The failure of regulatory authorities generally to perceive this distinction has occasioned the employment of a large quantity of energy in seeking a measure for rate-making purposes of an item whose very existence for those purposes is a matter of reasonable doubt. A completely satisfactory measure has never yet been discovered, and, save in those instances where a purely arbitrary "customary" allowance is made, the emergency prompts resort to a "lump-sum" valuations in which an absolutely nonmensurable "consideration" is given to the fact that the "business is in operation and earning money."

This, it is submitted, is the very antithesis of proper administrative practice. To be of real service, ad-

ministrative action in technical matters should be both sound and scientific in substance, and supported by opinions in which the reasoning is clear, logical, and complete. Loose phrases, ambiguous terms, and obscure and question-begging language have no proper place in these opinions; they are no more to be countenanced than loose practice in the determinations themselves.

It may be argued (and under other circumstances with some point), that authorities are not charged with the duty of explaining in every case the exact basis of their rulings; that if a given point of view is thoroughly presented upon one or two occasions the same explanation can be incorporated into later cases by the process of mere affirmative citation. The difficulty of this position in the situation at hand is that the decisions and opinions of a great many Public Service Commissions are so inconsistent within each jurisdiction as to render wholly unfeasible any regular practice of this sort.

The charge of inconsistency itself merits some consideration. An administrative Commission should be flexible and capable of adaption to changing conditions with respect to organization, procedure, and policies. Precedent is far less binding than in the case of the older judicial tribunals. Respect for, and adherence to, precedent is, of course, a cardinal feature of our traditional system of judicature, and much is to be said in defense of this attitude and in advocacy of its extension to, and at least partial adoption by, administrative Commissions; none the less it is no necessary criticism of a Public Utility Commission—in fact it may well be a matter of commendation—if a particular decision by such a body cannot be made to dovetail with certain of its prior determinations. Conditions change, and the opinions and viewpoints of competent men also undergo alteration, properly. The field is relatively new; the problems are technical and new light is continually being thrown upon them; they are constantly growing before the eyes of those charged authoritatively with the task of handling them.

Further, the personnel of these Commissions is a shifting one. But these factors, even in their entirety, cannot be made to justify decisions and opinions on going value which squarely contradict decisions and opinions rendered at an earlier time by the same Commission, and this without the slightest attempt either to distinguish from or to admit a reversal of the former findings. This practice, not infrequent, unfortunately, is to be distinguished from a mere failure to follow precedent; it is an ignoring of precedent—deliberate or careless inconsistency. It finds no justification, even in expediency; in fact expediency stands altogether opposed.

There is a marked disinclination on the part of Public Utility Commissions to make use of the results of independent scholarly research in this field. It is perhaps too much to expect that a body composed of from three to five members will be equipped to handle expertly every technical question which regulatory routine deposits on its desk, but there

One Defect in the Present System of Regulation—

"ONE *evidences no disrespect for the judiciary nor opposition to the principle of judicial review in pointing out that, in several conspicuous instances in which Commission denials of going value allowances have been reversed by the courts, the quality of the reasoning and the degree of understanding exhibited by the courts have been distinctly below the standard set by the respective Commissions. It raises anew and with particular emphasis the question of the justification of a system of regulation in which the findings of a presumably expert body upon technical matters of public policy may be (and are) superseded by the naive determinations of tribunals whose primary interests and special abilities lie in quite other fields.*"

is no convincing justification for the failure of Commissions to avail themselves of scientific material prepared by qualified persons who have made particular regulatory problems the subject of special and complete study, even though these persons do not in specific instances stand as litigants before the Commission or serve as experts in the immediate employ of the Commission or of any of the parties to the controversy.

Texts, tracts, legal and economic periodicals abound in studies of going value from which many Public Utilities Commissions could glean valuable information and points of view with which, if their opinions are reliable guides, they are at present unacquainted. The material in question cannot fairly or profitably be dismissed as mere academic "vaporizing;" the inability or unwillingness of Commissions to distinguish between vaporizing and sound research and hence to refuse consideration to anything which does not present itself in "regular" fashion tends to emphasize the point.

It is not urged that Commissions be transformed into groups of scientific essayists or academic theorists; the demand is for sound and convincing decisions on going value, based upon thorough and comprehensive study and analysis, and illumined by logical, complete, and candid opinions.*

IN an appraisal of the prevailing system of public utility regulation attention should be directed to the

*In dealing with going value, as well as with other problems of regulation, Public Utility Commissions generally might well give attention to the technique employed by Mr. Justice Brandeis in his opinion in State ex rel. Southwestern Bell Telephone Co. *vs.* Public Service Commission of Missouri, 262 U. S. 276 (1923). The effectiveness of regulation would be tremendously increased if this high example of the use in regulatory proceedings of the methods, materials, and results of scientific research were widely emulated. See also in this connection the opinion by Mr. Justice Brandeis in St. Louis & O'Fallon Railway Co. et al., — U. S. —, 73 L. ed. (Adv. 457), P.U.R.1929C, 161 (1929).

part played by state and Federal Courts.

In the contact between these tribunals and administrative Commissions an interesting variety of situations may be developed. An aggressive Commission may point the way to a tolerant judiciary; or a dictatorial court, jealous of its prestige and the "supremacy of law," may insist on translating its own conception of proper public policy into terms of constitutional limitation upon Commission action. It is not the purpose of this article to go at length into the broad question of judicial review, but it must be noted that with respect to the problem of going value, the relationship of court to Commission leaves much indeed to be desired.

There is, of course, an avowed dependence of the Commissions upon decisions of the United States Supreme Court as well as upon pertinent rulings of state and lower Federal Courts. This dependence assumes two forms: the court in the *rôle* of dictator, and the court as refuge.

Many Commissions have found themselves wholly constricted in their dealings with going value by absolute rulings of state and Federal Courts requiring substantial consideration of, or separate-sum allowances for, going value. Other Commissions, however, have so hastened to cite cases which were neither pertinent nor controlling as to evidence rather a desire for moral support than a respect for authority.

BOTH situations warrant comment. The first, in which Commissions definitely subordinate their own opinions to those expressed by superior tribunals, is a manifestation of the larger problem of judicial review. On more than a few occasions court review of Commission determinations on going value has produced disappointing results. One evidences no disrespect for the judiciary nor opposition to the principle of judicial review in pointing out that, in several conspicuous instances in which Commission denials of going value allowances have been reversed by the courts, the quality of the reasoning and the degree of understanding exhibited by the courts have been distinctly below the standard set by the respective Commissions. It raises anew and with particular emphasis the question of the justification of a system of regulation in which the findings of a presumably expert body upon technical matters of public policy may be (and are) superseded by the naive determinations of tribunals whose primary interests and special abilities lie in quite other fields.

These reversals, however clothed in terms of lack of power, are based essentially upon the opinion of the judges that the Commissions are pursuing an unsound policy. Constitutions are extended to their outermost limits when they are made by the courts to say that the policy of providing for business risks and the encouragement of entrepreneurial efficiency in any manner other than by the inclusion in the rate base of an allowance for going value is not only unwise but legally impossible.

THE second tendency noted above, *i. e.*, the practice of Commissions of seeking apparent court authority

(by way of secondary rationalization) for a position which they have decided independently to assume involves no fundamental legal or political principle.

However, while in the main there is in this tendency nothing inherently wrong or of doubtful wisdom, its development in opinions on going value has proved unfortunate in the extreme. Citations to be of weight must be in point, and it is a fact that a large proportion of the cases cited by Commissions as authority for the proposition that going value must be included in the rate base can and should be distinguished from the cases in hand.

No proceeding has been more abused in this connection than Des Moines Gas Company *v.* Des Moines (238 U. S. 153), in which the United States Supreme Court flatly refused to hold confiscatory a valuation in which nothing was allowed for going value.

Scarcely less frequently ill cited is Omaha *v.* Omaha Water Company (218 U. S. 180), a purchase case and hence clearly inappropriate for citation in a rate proceeding.

These cases have been used incontinently as authority for the necessity of making a separate allowance for going value in order to forestall reversal on the ground of confiscation. It is not encouraging to one possessed of high hopes for the success of Commission regulation to encounter constantly the spectacle of a Commission going through the form of expert analysis of a claim for going value; arguing that a going business is worth more than a dead one (and this in a rate proceeding where "worth" should have no standing whatever); that a cost attaches to the creation of a going business; that in its judgment a certain sum is a fair allowance; and closing with a citation of the Des Moines and Omaha cases.

Here is a jumble of inconsistent considerations, an unsupportable conclusion, and a citation hopelessly out of point.

COMMISSIONS have a real function to perform in their capacity as guides to the judiciary in matters where constitutionality depends upon technical considerations with which they are peculiarly qualified to treat. In countless matters of regulation Commissions have daily to deal in intimate fashion with matters which courts handle only infrequently and at a distance. It matters little that not all courts are willing to approve of this relationship or that some Commissions in their eagerness may have gone too far. Fundamentally, the relationship is sound; and those Commissions will be living up to the fullest possibilities of their high and important office which recognize and act upon it.

IT should be emphasized that the writer is fully aware that the problem of going value is one of policy—not a matter of inherent right and wrong—and that it is quite possible for reasonable and competent men to disagree concerning it. The phenomena which going value is made by its proponents to cover, must clearly be taken account of in some manner. The writer feels that this might best be done by means other than enlargement of the rate base—as suggested above, through the operating

accounts or the rate of return. But if Commissions in their wisdom consider going value allowances to be dictated by sound considerations of policy, they should certainly act upon their convictions—provided only that they should be in a position to meet opposing arguments and to demonstrate completely and convincingly the logic of their conclusion.

Commissioners need not turn philosophers, but current rulings might well be re-examined, and prevailing opinions might well be altered into meaty argument instead of high sounding, inconsistent, and improperly supported phrases. Exact points of disagreement should be set out and satisfactorily debated at least once in the history of each Commission. Some Commissions have already traveled extensively in this direction, but for too many Commissions it is still virgin territory.

The movement for the establishment of administrative Commissions in the field of public utility regulation gained early impetus and support from persons who were unwilling to have technical questions arising out of new and complex economic and social conditions dealt with at first hand by legislatures and courts, which by reason of organization, personnel, tradition, and the burden of other duties, were ill suited for the task.

Are these specially created tribunals themselves to become clouded with a tradition of unsuitability?

The possibilities inherent in the administrative system which aroused the enthusiasm of its early adherents still remain, but certainly with respect to the handling of the problem of going value they have matured only in isolated cases. Enthusiastic support cannot be made to thrive indefinitely on possibilities which grow continually less substantial.

A Public Utility Company "Stays Put"

THE merchant can liquidate his stock of goods, close up his shop, and move away if the town's ways don't suit him. The manufacturer can dismantle his plant and move his machinery to any other place where the prospects may be more pleasing to him. So with the broker, the banker, the insurance man, the professional man, the working man, the manufacturer's agent, and practically everyone else. He is not tied to any community. He goes where he fares best, at his own choice. But not so with the public utility. It is prevented by statute and by physical law from tearing up and moving away its car tracks, conduits, pipes, dams, power houses, and stations. It is as firmly fixed as the ground itself.

—PRESTON S. ARKWRIGHT,
PRESIDENT, GEORGIA POWER COMPANY

Remarkable Remarks

A. C. MARSHALL
General Manager, the Detroit Edison Company.

"American business today is a science, and the successful business man is a scientist whether he knows it or not."

STANLEY JONES
Writer.

"We don't know what electricity really is, and you don't know, and the scientists don't know. That is why the electric company sends you a bill for a number of 'watts.'"

ERNEST KAVER
Manufacturer of Providence, R. I.

"It is my reasoned opinion that sooner or later, the President will require a secretary in his cabinet who will need to organize a department to attend wholly to the problem of communication and nothing else."

GEORGE W. NORRIS
U. S. Senator from Nebraska.

"The cry of regulating such a (power) monopoly is preposterous when we realize that it is already large enough to enter the national field in regulating the government itself."

DEANE W. MALOTT
Assistant Dean, Harvard Graduate School of Business Administration.

"It is easy for one man, in a little shop around the corner, to engage in sharp practices. It is far different in a corporation where the individual executive is surrounded by associates whose respect and trust are necessary to his existence."

SIR ERNEST BENN
Economist.

"Before wealth or property can be owned it has to be made, and nobody will suggest that society can make anything. The making of wealth is beyond any question the exclusive function of the individual."

JOHN F. GILCHRIST
Vice-president, Commonwealth Edison Company.

"It is not at all uncommon in the present day for a large company to acquire a smaller one principally for the purpose of securing the services of the head of the smaller institution."

ED HOWE
Newspaperman and philosopher.

"Were it not for the intervention of courts, the American railroads would have long since been bankrupt and ineffective because of unfriendly and unfair public opinion; the best use made of courts is to prevent the destruction of necessary corporations managed by more honorable methods than those opposing them use in their business affairs."

J. C. BARNES
President, Public Utilities Advertising Association.

"Good will is based on understanding. Advertising helps our customers to understand."

FLOYD W. PARSONS
Author and editor.

"One who recently investigated the importance of education as a factor in business found that the young men and women making up the first quarter in scholarship of our schools and colleges have given to the country more distinguished people than the other three-quarters."

W. ALTON JONES
First Vice-president, Cities Service Company.

"There was recently published in the city of Madrid an accountant's report of the cost of the discovery of America. This accounting which was taken from documents discovered in Genoa disclosed that Columbus spent a total sum of $6,000 in his first voyage across the Atlantic."

PRESTON S. ARKWRIGHT
President, Georgia Power Co.

"We would be derelict in our duty not only to ourselves and our present customers, but to the future and to progress if we stood by with the knowledge that text books contained inaccuracies and misstatements about our business which is so vitally affected with the public interest, and if we did not do everything in our power to legitimately correct the misstatements."

J. O. MARTIN
Telephone employee of Washington, D. C.

"One thing that appeals to me about the telephone business is its essential democracy. . . . You don't have to be one of the 'F. F. V.' in order to succeed in the telephone business."

CHARLES M. RIPLEY
A General Electric Company engineer.

"The first telegraph wires were cut, the first railroad tracks torn up, the first sewing machine smashed, and the first man to sell hard coal (anthracite) in Philadelphia, was run out of the state of Pennsylvania as an imposter."

Reply of a school board in Lancaster, Ohio, to a request to hold a meeting for discussing a railroad project in 1832.

"You are at liberty to use the schoolhouse for all proper purposes but such things as railroads are impossible and rank infidelity. If God had intended that his intelligent creatures should travel at the frightful speed of 17 miles an hour by steam, he would have clearly foretold it in the Holy Prophets. Such things as railroads are devices of Satan to lead immortal souls down to Hell."

The Cost of Scenic Beauty—in Kilowatt Hours

When is a Commission justified in refusing a permit to a public utility company to install a plant if the process mars the wonders of nature? Here are some recent and significant decisions that reflect current opinion on the relative value of Art *versus* Power.

By ELLSWORTH NICHOLS

Is the destruction of the scenic beauty of a river a proper ground for denying a permit for hydroelectric development?

This is one of the questions raised in recent proceedings before the Federal Power Commission and the State Commissions. Answers to the question are hard to find.

The importance to the public of the conservation of natural scenic attractions is indicated by the action of former President Coolidge in signing Public Resolution No. 67, restraining the Federal Power Commission, pending further action, from issuing a permit for a power site at the Great Falls of the Potomac, situated only twelve miles from Washington. The parks committee of the National Capital Park and Planning Commission reported its disapproval of the development because it would destroy the natural beauties of the region. The final word in that controversy is still being awaited.

The Colorado Commission, in passing upon an application of a power company for a preliminary certificate of public convenience and necessity to consider the hydroelectric development of a water power site, said that a very large part of the evidence was devoted to the question as to what the effect upon the scenic beauty of Royal Gorge would be the withdrawal from above the gorge, during low stages (which occur frequently), of all but some fifty cubic feet per second of water. The applicant's attorney demanded "a liquidation of the scenery issue by the Commission."

The Commission said:

> "It goes without saying that Colorado's climate and scenery are and doubtless will continue to be in the future its greatest and most invaluable assets. It is impossible to place a money value on them. All reasonable care and caution should be exercised to avoid the impairment of the scenic beauty of this state, particularly such an outstanding feature as the famous Royal Gorge. There are

questions which are capable of exact determination with a strong degree of certainty by some fixed scientific or other rule. Unfortunately the question of the effect of the diversion at low water stages of all the water flowing through the gorge except some 50 or even 70 or 100 cubic feet per second is not one subject to such determination. It may be a question of opinion, but we doubt seriously whether the pleasing effect upon one's mind of viewing the canyon when there is running in the same only 50 cubic feet of water is as great as when there is running some three hundred feet or more. Therefore, we doubt whether the public convenience and necessity requires the contemplated project so constructed and operated as to divert all of the water but 50 cubic feet per second or any comparable amount from the gorge, even though the people of the state of Colorado might conceivably buy their electrical energy from the applicant at a trifle less than it would otherwise cost. We doubt seriously whether the public convenience and necessity would require any project if the greater part of the water is to be taken from the gorge in low water stages or if all of it is to be diverted during the night, even though none is taken out during the day."

Other grounds were also stated as the basis for a decision of the Commission refusing the certificate asked for.*

IN the absence of direct decisions in point, it may be profitable to discover to what extent aesthetic considerations are a force in other governmental activities; such cases, for example, as those involving condemnation of property for aesthetic purposes, taxation for the same end, and restrictions on building or industrial construction with the purpose of beautification rather than strictly utilitarianism in mind.

Then, too, a decision relating to a permit for utility construction on a road instead of at a water power may be of interest. Such a case was before the Oregon Commission.

The Commission, in denying an application for an order requiring the joint use of poles by telephone and telegraph companies, held that under an Oregon statute authorizing the Commission to require a utility to furnish adequate and safe service and under a statute empowering the Commission to require a utility to construct, operate, and maintain lines in such manner as to protect and safeguard the health and safety of employees and the public, the Commission could not enter an order based upon a finding that pole line construction interfered with and detracted from the scenic beauty of a highway.

The question before the Commission was not deemed to be one of hazardous construction, but rather what might be termed an aesthetic question.

The Commission, however, recommended that a consistent effort be made by highway authorities and utility engineers to establish a route that would avoid the necessity for placing poles on the river side of the scenic portions of the highway, and it further recommended that a more substantial, round pole of neater appearance be substituted, and that split poles be reserved for service on other than principal highways. An order was made that the company

*Re Public Service Co. (Colo.) P.U.R. 1929A, 259.

¶ *"AESTHETIC and artistic gratification are purposes public enough to justify the expenditure of money . . . the courts have frequently upheld condemnation proceedings to acquire land for parks and for strips along highways, which are not used for travel but for ornamentation."*

desist from continuing construction pending a conference with the State Highway Commission looking to the adoption of plans of construction in accordance with the spirit of the suggestions.

COMMISSIONER Corey, dissenting, said that the scenic beauty, while it is pleasing to the eye, is neither a public necessity nor convenience; that scenic beauty is not necessary to the conservation of public health or safety, and that he was unable to find in the Public Utility Act any intent of the legislature that the Commission should have power to regulate public utilities in the interest of conservation of scenic beauty.*

In weighing this opinion we must not lose sight of the fact that the Commission was acting under a statute which used the phrase "to protect and safeguard the health and safety of employees and the public," and which, therefore, placed restrictions on the Commission.

Whether the legislature could have made "scenic beauty" a factor is another question.

Aesthetic and artistic gratification are purposes public enough to justify the expenditure of money, according to the present view. Municipalities have in many instances spent money to make public buildings attractive, and it has been considered proper for the Nation, state, or city to erect memorial halls, monuments, and statues and to plan public buildings upon a more expensive scale than if designed for utility alone. The appropriation of money raised by taxation for public parks and playgrounds, expositions, art museums, and art schools and for the beautification of public buildings and streets has generally been upheld by the courts.

The courts have frequently upheld condemnation proceedings to acquire land for parks and for strips along highways which are not used for travel but for ornamentation.

SOME courts, though, have announced the doctrine that the inhabitants of a city or town cannot be compelled to give up rights and property, or to pay taxes for purely aesthetic objects, but that when the primary and substantive purpose of the legislation is such as justifies the act, considerations of taste and beauty may enter in as auxiliary.

Restrictions on billboards in public places are usually upheld. Municipalities are supposed to have control over streets, sidewalks, alleys, public build-

* *Re* Oregon State Highway Commission (Or.) P.U.R.1921E, 814.

ings, and public land, and they are given the right to make their property as attractive as possible.

A Federal Court, in discussing the question whether the use of Cascade Canyon in Colorado with its small but beautiful stream and luxuriant vegetation for a summer resort was a "beneficial use," said:

> "We say that the creation of a summer resort is a beneficial use. Is it no benefit to the public to spend money in making a beautiful place in nature visible and enjoyable? Is it not in line with public health, rest, and recreation? If a person takes a stream and, after putting in waterfalls, ponds, bridges, walls, shrubbery and blue grass sod, works it into a beautiful home, that is a beneficial use. It is a benefit to the weary, ailing and feeble that they can have the wild beauties of nature placed at their convenient disposal. Is a piece of canvas valuable only for a tent fly but worthless as a painting? Is a block of stone beneficially used when put into the walls of a dam, and not beneficially used when carved into a piece of statuary? Is the test dollars or has the beauty of the scenery, rest, recreation, health, enjoyment, something to do with it? Is there no beneficial use except that which is purely commercial?" *

THERE is said to be an aesthetic and cultural side of municipal development which may be fostered within reasonable limitations. Such legislation is merely a liberalized application of the general welfare purposes of the state and Federal Constitutions.†

Chief Justice Bond of Maryland, in a dissenting opinion, has said:

> "With time and the increase of general prosperity and comfort, it has become increasingly difficult to draw any reasonable distinction between annoyance and discomfort through one sense, such as smell, and that through some other senses that may be described as aesthetic ones. And however it may be analysed, there is a widespread dislike of having business uses invade residence districts to such a degree that the entry of any business use, with its threat of further business development, is a source of distress to many owners of homes and tends to cause depreciation and sacrifice of the homes." *

An examination of cases dealing with the subject, however, indicates timidity on the part of the courts in upholding legislation purely on aesthetic grounds. They usually find some basis in "public health and safety," even if it be the case of an objectionable billboard which is to be abolished while some less distasteful, but perhaps no less dangerous, structure is permitted to stand.

NEWMAN F. BAKER, in his book entitled "The Legal Aspects of Zoning," states:

> "We find that the old rule that the police power is limited to promoting public health, safety, morals, and so forth, is still the rule that is followed by the courts, although they find this narrow rule in conflict with the needs of a changing society. But, instead of breaking down the old limitations upon the police power and frankly admitting that the power can be used to promote municipal aesthetics for the public welfare, the courts seek in every way to avoid the issue by finding that the 'safety, health, or morals' demands the use of the police power; but in so doing the imagination is at times pretty severely stretched."

* Cascade Town Co. *v.* Empire Water Co., 181 Fed. 1011, 1017.

† Ware *v.* Wichita, 113 Kan. 153, 157, 214 Pac. 99.

* Goldman *v.* Crowther, 128 Atl. 50, 62.

The same author predicts that the time is not distant when the courts of our country will hold that reasonable legislation affecting the property of the individuals will be considered constitutional if passed to promote the well-being of the people by making their surroundings more attractive, their lot more contented, and by inspiring a greater degree of civic pride. He continues:

> "The decisions denying that the suppression of ugliness is a necessity do not settle the question for all time. As soon as the average person may be thought to have developed an appreciation of the beautiful the courts will, no doubt, sanction legislation for aesthetic purposes. Whenever things, once considered luxuries, become, in the course of progress, necessities, the courts may be depended upon to treat them as such."

THESE expressions in support of a consideration of the aesthetic do not necessarily prove that scenic beauty should stand in the way of industrial expansion. We cannot subscribe to the lament of Ruskin that the desecration of the English hillsides by railroad construction is deplorable. Still there may be instances where a proper appreciation of "scenic beauty" may be a factor in exploitation to be weighed in a common sense fashion, while not an impassable bar to progress.

Lines to the Gas Man—in a Faltering Meter

A NEWSPAPER recently announced that in the merry month of April this year, the president of a gas company ran into a severe snow storm between Denver and Colorado Springs. The gas man was on a journey to see the Commission in order to get permission to reduce gas rates. Motoring was difficult and dangerous, but the Commission was reached and the reduction was authorized.

This is not the popular old time view of the attitude of the gas man toward rates.

More than a decade ago there was a gas case before the Oklahoma Commission. A popular view of the gas man of that day was expressed in some lines written in an inspired mood and faltering meter, which appeared in a local newspaper. These were incorporated in the opinion of the Commission; they ran as follows:

"We get up in the morn,
"Full of vigor and sass
"Shuck on our pajamas,
"And light up the gas.
"It flickers and flirts
"With many a pop
"Then sniffles and sneezes
"And dies 'ker flop.'
"We cuss and we snort
"And damn the gas man,
"Then lug out the ashes
"In a battered ash pan.
"But the meter clicks on
"Just as sure as fate,
"Like death and taxes,
"We have no rebate.
"But often we wonder
"If the day shall come
"When value received
"We'll get for our 'mon.'
"For gas men come
"And gas men go
"Full of good reasons
"For pressure low,
"But the meter clicks onward
"Just the same.
"Will we ever get wise
"To the gas man's game?"

Now, we see, it is possible for a gas man to face a blizzard to get a Commission to authorize a rate reduction.

The fact is that contrary to the popular view low rates are good for a gas company as well as for the public. Exacting the last penny from ratepayers would be poor business policy.

PUBLIC UTILITIES FORTNIGHTLY
MUNSEY BUILDING ✣ WASHINGTON, D. C.

July 25, 1929.

Dear Sir:

About commencement time we chanced to read an editorial in a college weekly. The editor stated that a lecturer had criticised him. As the lecturer found no radical or reactionary editorials in the weekly, he said the editor was doing no thinking.

The editor seemed to be cut up a bit by this rebuke. He sought to establish an alibi. He said college editors had something to do besides writing editorials; that their regular college work consumed the major portion of their time; that there was, therefore, little opportunity for outside research upon which to base editorials.

His plea, in effect, was that an editor must know something about the facts before attempting to discuss vital issues.

This conclusion of the college editor speaks well for his spirit and his idea as to one of the qualifications supposed to be required for the editorial job. At the same time it exposes his lack of experience.

In our opinion, if editorials had to be based on research and knowledge of the facts, the output of this class of literature would be very much more limited than it is. A knowledge of the facts might often prove very embarrassing to an editor; and, certainly, the time required to ascertain the facts would be a serious obstacle to productive effort.

One of the most skillful debaters we knew in college was a man who never allowed himself to be hampered by

research. If a statement of facts was necessary to drive his arguments home, he assumed that the facts must exist and, therefore, did not hesitate to state that they did exist. This saved him much valuable time for other things. Whether the facts were as stated did not matter to him so far as the debate was concerned. It was up to the other side to correct his assertions if they could. Usually they couldn't because they knew as little about the facts as he did. This always gave him the edge on opponents less skilled in assuming the existence of helpful facts.

This practice applied to editorial writing and to other forms of expression of opinion has some advantages. It not only saves time, but it is an easy way of throwing opponents on the defensive. It puts the research work up to them. For these, and perhaps other reasons, it has become quite a popular habit.

So, we would like to explain to this youthful college editor that knowledge of the facts is not so necessary for the writing of editorials as he thinks; that it is often, indeed, a very serious handicap.

We know because we have not only read but written editorials.

Very truly yours,

Henry C. Spurr

HCS/M

¶ *"So they went on towards the house (the house of the Interpreter), and when they came to the door they heard a great talk in the house."*
—PILGRIM'S PROGRESS

A MODERN COUNTERPART OF

"The Interpreters' House"

How the careful compilation of facts, the painstaking analysis of technical details, and the fearless tackling of highly controversial regulatory problems by the Three Wise Men of the Public Service Commission are serving the public interests of Montana.

BY FRANCIS X. WELCH

MONTANA is a comparatively young member of our family of states and probably it still belongs to that class of localities referred to by traveling theatrical companies as "the provinces." It has indeed great open spaces and magnificent rolling mountains as its name implies.

But in the science of government Montana is not provincial. If the density of its population per square mile is modest compared with Eastern states, the achievements of its citizens in public service per hundred thousand may be placed beside any other state in the Union with pardonable pride.

The name of Montana immediately calls to mind Thomas J. Walsh, unquestionably one of the most capable men in the United States Senate, and his colleague Senator Wheeler, also a competent representative. Her governors, running even back to the famous Irishman, Mr. Meagher of territorial times, have been as a whole an unusual collection of efficient executives. Mr. Bancroft in his exhaustive history of this progressive state points out that while Montana in her earliest days was afflicted with a lawless element requiring such harsh remedies as "vigilance committees," yet she was always fortunate in having upright and fearless judges, first in her territorial courts and then in her state judiciary.

In fact, one wonders how so much genius for government happens to be confined to such a sparse population —a pioneer population in whom one as a rule would sooner expect more rugged qualities, such as fearlessness and honesty, than mastery in the advance art of self-government.

BUT this article is intended neither as an eulogy of the mountain state nor as a panegyric of her more brilliant sons and daughters. It is an attempt to describe briefly one of the most interesting public service regulatory bodies in the United States—the Public Service Commission of Montana, also officially known as the Board of Railroad Commissioners of the State of Montana.

Well may the state be proud of her senators, of her executives, and of

her judiciary. But when it comes to public service regulation, take the word of one who has read many opinions of many Commissions, Montana has a most original, two-fisted, conscientious Commission.

THERE are two outstanding qualities about that Commission in Montana—it is fearless and thorough. It seems unafraid to walk right into the most highly controversial legal questions, and once anything is undertaken the Commissioners seem to turn into a combination of jurists, engineers, chemists, accountants, philosophers, chauffeurs, and general all around handy men. Select any recent decision of the Montana Commission at random as printed in the *Public Utilities Reports* and the opinions will invariably reveal painstaking care and many hours devoted to research. Every conclusion is cited with authority directly in point. Every situation is competently discussed and analyzed.

For example, somebody on that Commission must be rarely qualified on gas mechanics. In the recent Great Falls Gas case, the Commission spoke so easily about the relative merits of Boyle's on Marriotte's law that this writer (who happened to edit the opinion for the *Public Utilities Reports*), had to "go into conference" in order to write the syllabi. And just to prove that it *was* rather technical for a mere lawyer to grasp, here is a typical paragraph from that decision:

> "Again, let us assume that the utility takes 1,000 cubic feet of gas measured through a meter at the contract pressure base (8 ounces over 14.4 pounds) and reduces its pressure so as to pass it through a consumer's meter at a gauge pressure of four ounces over 13.03, estimated prevailing atmospheric pressure at Great Falls, then according to the formula the consumer's meter will register 1122 cubic feet, approximately. To state it in formula form:
>
> $$Q = 1{,}000 \frac{14.4 + .5}{13.03 + .25} = 1{,}121.987 \text{ cubic feet}$$
>
> "When gas is measured at high pressure and the measurement is expressed at a base pressure, the assumption is indulged in that natural gas conforms to the laws of perfect gases."

AND that is not all about the Great Falls decision. It was in that case that the Montana Commission courageously handled one of the most troublesome problems in public service regulation—the franchise tax. Here is the situation with which the Commission had to deal:

We all know that a utility company cannot use a city's streets to serve the public unless the city consents. Cities often make consumers of utility service pay high for the use of their streets. It has generally been thought that a city can make such a charge as it wishes, even if it ought not to do so. This charge is often spoken of as a franchise tax.

Possibly the clearest example of this sort of tax is the Baltimore park tax. It seems that the city of Baltimore supported its public park system at the expense of the street car riders. Since 1910, according to the Public Service Commission of Maryland, this has cost the patrons of the railway company $15,406,794. Every time a citizen of Baltimore gets on a street car, he pays half a cent towards

the city parks; nobody else pays anything.

Then there is another case where the street car company, among other things, was required by the franchise to pave the entire roadway, to sprinkle streets, to build drains, bridges, and fences, and to install electric street lights. In so far as we are aware, Baltimore is the only city which gives its street car riders the honor of maintaining its parks. Several years ago the Montana Commission said a gross receipt charge in a street railway franchise was a "relic of the days when franchises were evolved out of a spirit of bargain and sale and there was no clear conception of a street railway's function as a public service corporation, and without regard for patron's right to a service burdened by as few operating costs as possible."

But to get back to the Great Falls case it appears that the gas company in that proceeding set up the sum of $11,000 as an operating expense to cover a 2 per cent gross receipt tax payable to the city of Great Falls, Montana. It was a mighty delicate proposition but the Montana Commission after looking over all the available authority in point decided that the state, armed with police power and acting through a designated agency invested with the exclusive control, supervision, and regulation of public utilities in the exercise of such powers, may strike down a so-called gross receipt tax provision of a municipal ordinance, the effect of which is to devote the revenues of a utility to the advantage of taxpayers and discriminating to that extent against the ratepayers or customers.

The Great Falls Gas Company was, accordingly, relieved by Commission order of the burden imposed by the franchise requiring the payment of a gross receipt tax. Aside from legal precedent the basis of the decision was grounded in economic theory. Here is a paragraph that, off-hand, looks more as if it were abstracted from the works of Adam Smith than a routine decision of a Public Service Commission:

> "This form of indirect taxation upon consumers is now quite generally recognized as fundamentally and economically unsound. While it might be considered perfectly natural that a municipality, anxious to keep down the local tax rate by which it is so largely judged, should seek to unload upon public utilities a portion of the burden of providing revenues for municipal requirements, such a policy necessarily reacts upon the public served by the utilities. A public utility has no mysterious sources of revenue, but must obtain its funds from the people that use its service. Any burden imposed upon the utility must ultimately be borne by these consumers. We can see no difference in principle between a franchise provision that imposes a gross receipts tax upon a utility and one that imposes the burden upon the utility of furnishing a city with its service free for municipal purposes, or one that imposes upon a street railway the burden of paving streets upon which it lays its tracks. They are all species of special taxation which discriminate against ratepayers. In more recent years Public Service Commissions have been stepping in and relieving the consumers of these onerous and discriminatory burdens."

As far as this writer can find out no other Commission has gone

The Economics of the Franchise Tax

(An interpretation that is embodied in a representative routine decision of the Commission)

"THIS form of indirect taxation upon consumers is now quite generally recognized as fundamentally and economically unsound. While it might be considered perfectly natural that a municipality, anxious to keep down the local tax rate by which it is so largely judged, should seek to unload upon public utilities a portion of the burden of providing revenues for municipal requirements, such a policy necessarily reacts upon the public served by the utilities. A public utility has no mysterious sources of revenue, but must obtain its funds from the people that use its service. Any burden imposed upon the utility must ultimately be borne by these consumers. We can see no difference in principle between a franchise provision that imposes a gross receipts tax upon a utility and one that imposes the burden upon the utility of furnishing a city with its service free for municipal purposes, or one that imposes upon a street railway the burden of paving streets upon which it lays its tracks. They are all species of special taxation which discriminate against ratepayers."

—FROM A DECISION OF THE PUBLIC SERVICE COMMISSION OF MONTANA

quite so far to attempt to relieve the company from paying its city for the use of its streets. Only a few months before the Great Falls decision the highest court of Connecticut declined to interfere with the bargain which a city made with a utility, even though it took the form of a most burdensome gross receipt charge.

Furthermore, this action of the Commission has provoked considerable debate among utility attorneys. Some lawyers say that the Commission has exceeded its powers. Others equally informed are inclined to concur with the decision. But whether or not the ruling is sustained on appeal or hereafter, no one can say that the Commission approached the subject without its eyes wide open and fully aware of contrary authority. It was just that the Commission after carefully considering the entire situation decided that it had the power to relieve the company from an apparently burdensome franchise tax. It is to be hoped that this legal ghost will be laid sooner or later by the highest court and when it is, regardless of which way it is laid, the Montana Commission should get full credit for fearlessly tackling a regulatory bug-a-boo of long standing.

THE opinions of the Montana Commission really stand out in point of literary excellence and aside from the erudition already mentioned, the language is usually simple and clear and there is a never failing com-

mon sense and human attitude that is not usually conveyed by legal opinions. Sometimes there is a touch of humor in them. For example, the Commission seems to be of the opinion that narrow canyon roads, mountain grades, and sharp line curves might do very well as suggestions for a Coney Island "jack rabbit," but not as bus routes to Helena. In refusing to sanction traffic over its passage ways the Commission pointed out that the curves of the highway described in an application for such authority were more than psychic. The opinion stated:

> "It is cited that among the passengers who actually took the bus route to Helena, there were very few who repeated it.
>
> "This reluctance on the part of the public has been characterized as being due to a mental hazard but we are convinced that the hazards that actually exist over the proposed Butte-Helena and Helena-Great Falls routes do not only exist in the mind but are there in reality."

To summarize, the reports of this Commission reveal an amazing grasp on the most varied and technical matters in connection with public utility activities, and are in a class by themselves for courage, learning, and that most important of all commodities common sense.

THE original Railroad Commission was created in 1907 just twenty-two years ago. It is well worth the time of anyone really interested in administrative regulation to trace the history of this tribunal from its modest beginning to its present status as one of the most powerful and popular Public Service Commissions in the business. This Commission has been handed one by one, by the legislature of that state, jurisdiction over practically every type of utility functioning there until today it has power to regulate railroads (5,419 miles), telephones and telegraphs (61), electric companies (45), gas companies (13), heating companies (7), oil pipe line companies (4), flour mills (76), irrigation districts (24), producing oil wells (1060), producing gas wells (126), and dealers in gasoline, oil, etc. (1949);—all this in a state ranking thirty-ninth in population.

Speaking of the advance made in Montana transportation, Mr. R. F. McLaren, Assistant Secretary of the Commission, sends us this statment:

> "The fur traders, the earliest white men to come to Montana, came up the Missouri in keel boats, dugouts, and steamboats. Travel by land can be traced back to the dog travois used by the Indians. Dog-drawn sleds were used to haul the valuable fur catches overland to the trading posts. The oxcart made entirely of wood, came with the miner. The caravan of pack horses was the freight train of the earlier settler. Next came the covered wagon era and a little later, the stage coach. The stage coach was used in Montana as late as 1887. The first steel rails were laid by the Utah and Northern Railway to Red Lake, Montana, early in 1880.
>
> "The traveler in Montana today is offered three modern means of transportation. He may ride in the coaches of a fast transcontinental railway, go by car or bus over improved highways, or travel in the air with the United States air mail service or in a privately owned plane."

THE latest air route brings Great Falls, Montana, within nineteen

"THE people of Montana created their Commission not as a result of an anti-monopolistic panic, nor in the spirit of corporation baiting. . . . It is a tribunal established to protect on one hand the ratepayers from the expense and delay of formal litigation, and the utility on the other hand from the lack of special and technical knowledge of utility affairs that it seems to be inherent in the legislature and the judiciary."

hours of Chicago and twenty-seven hours of New York. There is also an aerial service to both the Glacier and Yellowstone Parks. Sixteen cities in the state have established airports. Bus routes in Montana total 1,763 miles while recent additions to the railroad system make a total rail mileage of 7,100 miles within the state.

The jurisdiction of the Montana Commission may be further broadened if the inland waterway programs now in contemplation are ever put into effect. Water transportation on the upper Missouri river and the St. Lawrence waterways are projects that will place Montana much closer to the Atlantic seaboard, making possible greatly reduced freight rates on Montana's varied products.

No discussion of Montana's utility system would ever be complete without a special mention being made of the Northern Pacific Railroad system. Its almost romantic history has been linked with the history of the state since railroading first came into Montana. Mr. McLaren sends us a graphic picture of this development.

"The Northern Pacific Railway Company's line much of the way follows the route of the historic Lewis and Clark exploration party which was planned by President Thomas Jefferson to 'trace the Missouri to its source; to cross the high lands (Rocky Mountains), and follow the best water communications to the Pacific Ocean.' This party left St. Louis May 14, 1804, passed the 'Gates of the Mountains' near Helena July 18, 1805, and reached what is now Three Forks, Montana, the head of the Missouri, on July 25th. At the Salmon river divide they met the Shoshones and from them procured horses to go to Traveler's Rest in the Bitter Root Valley, near Missoula. After many weeks of hardships they paddled down the Columbia, passed the future site of Vancouver, Washington, and the mouth of the Willamette river, and arrived at the mouth of the Columbia, the present location of Astoria, Oregon, on December 8th, where they remained for the winter. Homeward bound, the party left the seacoast March 23, 1806. At Traveler's Rest again they divided, Captain Clark with the main party returning by the outgoing route to the Three Forks of the Missouri and down the Yellowstone to its junction with the Missouri. Lewis, with a small party, went across the mountains to the Great Falls by way of Missoula and an Indian trail through a mountain pass to the northeast, reaching the Missouri. Lewis rejoined Clark near the mouth of the Yellowstone August 12, 1806. The explorers reached St. Louis September 23, 1806.

"Forty years later, Asa Whitney, another explorer, initiated a railroad project to connect the Great Lakes and the Pacific Ocean. Within ten years I. I. Stevens began a survey which determined the Northern Pacific line. The story of Northern Pacific's construction, which began in 1870, is one of almost constant struggle through all forces of a gigantic wilderness and with the more suave but less tractable political and economic forces of the east. The last spike uniting the line from the west with that of the east was driven at Gold Creek, Montana, September 8, 1883, finishing thirteen years of engineering accomplishment, ribbons of steel stretching across the trail of Lewis and Clark."

WHEN one considers the tremendous size of this state, embracing a greater area than all the New England states, New York, New Jersey, Delaware, and Maryland put together, and then its spare population, it is remarkable to note the progress of electrification. In 43 communities served by the Montana Power Company there are at the present time 49,500 lighting and power customers with an installation of 6,200 electric ranges. The average consumption of electric energy in a home amounts to 39 kilowatt hours per month, which at the present rate costs $2.16.

The records show that fifteen years ago the average domestic consumer used but 14 kilowatt hours per month and had practically the same monthly bill as now; that is to say, for the same money a customer may use today 178 per cent more electricity than he could in 1913, due to improvements in the manufacture of lamps, the production of energy, the cost of distribution, and a wider field to serve. It is not so very long ago that 16-candle-power lamps were considered as standard, while today the modern home is equipped with lamps as high as 200 candle power and which take practically no more current than the old-style lamp formerly in use.

The situation with reference to the Montana Power Company is representative of many such situations throughout the state, in a large measure the result of the efforts of the Public Service Commission in establishing uniform and economical methods to serve the people with these necessaries of life.

THE people of Montana have always wanted Commission regulation and once established the Commission has always been very popular both in and out of the state. Mr. McLaren says:

"The insistent demand of public sentiment for state supervision and regulation of practically all services rendered to the people as a whole by corporations, private companies, individuals, or associations of individuals, has brought about the establishment of Commissions given the power to investigate, supervise, and control the operations of utilities thus engaged, and to act as mediators in the matter of rates and service rendered; not, however, in a reprehensible or antagonistic spirit (which impression too often prevails), but for the purpose of justly and equitably arbitrating any and all matters and things alleged to constitute unfair, unreasonable, or unjustly discriminatory acts or practices. A utility has the same right and privilege to apply to the Commission for relief from oppression in the same manner as a community may complain of its grievances, whether real or potential,

and shall be given the same consideration in the ultimate determination of any and all questions arising."

Thus it will be seen that the people of Montana with characteristic fairness created their Commission not as a result of an anti-monopolistic panic nor in the spirit of political corporation baiting. It was established, as the language of the statute plainly indicates, as a friend of the utility and ratepayer alike, to settle their differences and regulate public service utility policies from a standpoint of public interest. It is a tribunal established to protect on one hand the ratepayers from the expense and delay of formal litigation, and the utility on the other hand from the lack of special and technical knowledge of utility affairs that it seems to be inherent in the legislature and the judiciary.

ALTHOUGH the original Railroad Commission was created in 1907, the records from the offices of secretary of state show that the Public Service Commission in Montana was created March 4, 1913. Senate Bill No. 10, introduced by Owen Burns, democrat, of Lewis & Clark county, was passed by both houses without a dissenting vote. The record does not show that there was any particular opposition to the measure.

There are three Commissioners in Montana and they are elected for a period of six years each at a salary of $4,000 per annum.

In point of volume the largest proceeding ever held by this Commission was brought by Wellington D. Rankin, then attorney general for the state, against all steam carriers in intrastate commerce, alleging generally intrastate rates to be unreasonable and discriminatory with a prayer for horizontal reduction. The complaint was dismissed for a failure of proof and in its report and order the Board said in part:

> "The attorney-general is not a proper party to institute a proceeding attacking railroad rates fixed by the Board of Railroad Commissioners."

The record in this case was very voluminous. There were 210 witnesses examined on the stand in thirty-eight days and some nights during which the testimony was taken from April 19th to June 2, 1923. Testimony was contained in eight volumes embracing 5,578 typewritten pages. Five hundred and eighty separate exhibits were introduced consisting of typewritten or printed statements, charts, graphs, maps, tariffs, reports, tables of figures, ex-parte statements, letters, newspaper clippings, and miscellaneous matter. Many of these exhibits are in themselves several hundred pages in length. Taken as a whole they add nearly 6,000 pages to the records. The complete transcript was not finished and delivered to the Board until November 27, 1923.

JUST from the standpoint of dollars and cents, the case of the American Railway Express in *Re* Montana Express Rates, Docket No. 788, is probably one of the most important ever held. It appears that the Interstate Commerce Commission had granted a 26 per cent rate increase to the American Railway Express Company in 1921 at which time the Express Company petitioned every state

Commission for a similar horizontal increase on intrastate traffic. This was granted in all except seven states, two of which allowed one-half of the increase or 13 per cent and the other five, Montana being one of them, declined to allow anything.

The Montana Commission was probably the leader of this group and wrote a very strong opinion, taking the view that while the Express Company had undoubtedly made a showing of the need for greater revenue, Montana was already carrying its just proportion of the load. The case was heard in Helena on May 26, 1921, and was decided August 1, 1921, denying the application in its entirety.

The important factor to observe in this case is this. Had the Montana Commission granted the increase asked by the Express Company, the people would have paid in express charges, during the 5-year period in which the 26 per cent increase continued in effect, $846,974 *more* than they did pay on Montana intrastate business. The Montana Commission was all that stood between the people and this increased transportation cost of close to a million dollars.

This Commission has handled up until March 20, 1929, 1,074 formal and 1,809 informal docket numbers. It has issued 1,533 orders and the average number of cases handled per year has been 140.

At the present time and for the past year the Commission's time and attention has been given largely to oil and natural gas problems. It is only within the last four years that natural gas has been produced in large quantities within the state. As the Commission has jurisdiction of the conservation of natural resources a good deal of time and study has been given to the drilling, plugging, and abandonment of oil and gas wells in the five gas fields of the state.

At some time during approximately every session of the legislature there has been a proposition by somebody or other to abolish the department with the result that numerous investigation committees have been appointed by the assembly, and probably the best evidence of the success of the Montana Commission, both in its "railroad" and in its "public service" departments, is that after each and every session it finds itself with added jurisdiction and more duties to perform.

It would be too much to expect universal satisfaction in the disposition of a great number of cases coming before this Board; just as it would be unreasonable to expect the decisions of a court to meet with the approval of litigants who feel that they had a just cause, and to whose interest the mandate of the law was adverse. It is conspicuously true, however, that the criticisms of the Montana Commission invariably come from uninformed sources and manifest in many cases an utter lack of knowledge of the facts upon which an order must be founded.

Discussing this situation, Mr. McLaren's statement says:

> "More plainly speaking, there is in every community its quota of 'talent' which appears to have been hidden under the proverbial 'bushel,' unobserved, unsolicited by others, and is there permitted to remain dormant, notwithstanding that many, if not all, of the most difficult problems could

thereby be quickly solved without effort, while others labored, sometimes vainly, with the intricacies of a complex situation, looking to a fair and equitable solution on a sound foundation, bearing in mind the varied interests involved.

"Annual reports, twenty-one in number, have been made as required by law, containing full detail of the operations of the Board of Railroad Commissioners and its subsidiaries. Therein will be found reports complete upon which each and every order issued was predicated, and the extent to which in our opinion relief could be granted consistent with all things. The Board has no apologies to make. No doubt errors have been made; indeed it would be remarkable if in the adjudication of a maze of contention covering a period of twenty-one years, a miscarriage of justice did not exist. We do not plead perfection nor the guidance of divine power, but we do invite, and hereby extend to all having an interest therein, an opportunity to scrutinize the records of this department; to ask unlimited questions as to whys and wherefores, and having done so, submit to us a statement of the wrongs that we have committed.

"Except in very few instances it is not possible to express in monetary terms the benefits that accrue to the people by reason of the operations of this department of the state's government. This will at once be obvious by a casual review of our annual reports. Additional or improved passenger train service may not effect a direct saving, but it is an advantage and a convenience that indirectly brings to the traveling public a saving in time and in other ways that cannot be computed in dollars and cents. The same applies to railroad crossings, tracks for loading and unloading, station facilities, stock yards, and many others; and after all, the item of SERVICE alone, protected against unwarranted increases by state supervision and control, contributes more to the welfare of the people than the mere cost of such administration."

MONTANA certainly has a splendid wide-awake Commission — a Commission learned in the law and versed in the numerous other matters that come into play in public service regulation; a painstaking and hard working Commission of three men, Chairman Daniel Boyle, Leonard C. Young, and Lee Dennis, who have saved and are saving thousands of dollars to the people of that state through the administration of economic policies adopted and who have at the same time gained the good-will, respect, and co-operation of the utilities subject to their jurisdiction. But, as has already been mentioned, when all of its qualities are reviewed there are just two things that stand out about that Montana Commission—it is fearless and it is thorough.

"Make a Profit—or Clear Out"!

WHEN *a utility finds it cannot under any circumstances make certain operations profitable it must clear out—not sell out. Authority has recently been refused to utility companies that sought to enter into proposed leases of particular operating rights that would tend to shift the utilities' responsibilities to others who, in some cases, are not qualified either by experience or by financial backing to assume them.*

WHAT READERS ASK

Out of the mail bag of the Editor have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

QUESTION

How does it happen that contracts are binding in other kinds of business but are not always binding in public utility business? Why, for example, can Commissions set aside rate contracts between municipalities and utility companies?

ANSWER

This is a very difficult question to answer briefly; but in general it may be said that utility business is subject to regulation to a much greater extent than any other kind of business. Where rate contracts are set aside this is done for the public good. The general rules with reference to the right of the state to waive or set aside rate contracts were established largely in proceedings on behalf of the ratepayers to reduce rates which had become unreasonable under existing contracts. When operating costs began to soar to extraordinary levels owing to the economic disturbances produced by the War, rate contracts were set aside upon complaint of the companies that the contracts had become noncompensatory. These contracts were set aside for different reasons. It was held in some cases that the municipalities had no specific authority to enter into such contracts, or that if entered into the municipality was acting as an agent of the state and that the state had the right to waive the provisions of the contract. In other cases it was held that the contracts were made subject to the superior power of the state to regulate rates. Some state constitutions forbid the regulatory power of the state to be bartered away by contract. It is said that it is very important that the state shall not lose its control over utility rates and service. It is, therefore, deemed to be in the interest of the public welfare that this state power shall not be interfered with by contract. If rate contracts were inviolable, a utility company might make long term contracts with its patrons which would, for the time being, prevent the state from exercising its control over rates and service. That is why, generally speaking, utility contracts relating to rates and service stand on a different basis from contracts in other lines of business.

QUESTION

Is taxicab service public utility service subject to regulation as to rates and service?

ANSWER

While taxicab service may not come within the definition of utility service contained in some of the state statutes, it is a public utility service subject to regulation. It was stated in a Pennsylvania case that it was recognized that at common law one might, by his profession, impose limitations upon his service as a common carrier by restrictions relating not only to the things to be carried but also with respect to territorial extent. Taxicab service is known "call and demand service." In a Pennsylvania superior court case it was said that taxicabs are now so generally in use that they are included in the class of common carriers; that the name was coined to describe a conveyance similar to a hackney carriage operated by electric or steam power and held for public hire at designated places subject to municipal control.

QUESTION

What does the term "farm haulers" mean?

ANSWER

This term has been applied to a class of motor carriers engaged in transporting farm products or implements. In California all

motor carriers who are engaged in transporting farm products or implements in such a manner that at least one terminus of the operation is a farm, were exempted from regulation by a statute passed in 1923. This statute was subsequently declared unconstitutional because it gave the farm haulers a privileged position not enjoyed by haulers of other commodities. (See Motor Carrier Regulation in the United States, by John J. George, p. 36.)

QUESTION

Is the regulation of public utilities a new development in economic policy?

ANSWER

No. It is a return to medieval policy. At one time legislative regulation of various kinds of business and employment was very extensive. Special rules of law also applied to certain callings which were deemed public rather than private. Special obligations rested upon those engaged in these callings. Later on, probably on account of wider spread of the various callings, regulation by the state was abolished in favor of freedom from restraint. In recent years there has been a gradual return to regulation.

QUESTION

What is meant by the "company-wide" theory of valuation of utility property as distinguished from the "local area" or "segregated district" theory?

ANSWER

The "company-wide" theory of valuation, which is comparatively new and which is coming more and more into popular favor, requires the fixing of rates based on a valuation of a company's entire property within the state, the determination of proper and necessary expenses, and the amount of revenue to meet these expenses. In a telephone case, for example, under this method, the payment of this revenue is distributed over all the company's various exchanges in just proportions according to the class of service desired, the number of consumers, physical industrial needs and conditions. The "local-area" theory requires that rates in any particular community shall be based on the company's investment within the boundaries of that community.

QUESTION

Is regulation by State Commissions better than regulation by direct act of the legislatures or by means of franchise contracts or ordinances. If so, why?

ANSWER

The increasing tendency in the various states towards regulation of utilities by Commissions in place of the old method of direct legislation or contracts with political subdivisions indicates a wide spread belief that Commission regulation is preferable. This opinion, of course, is not unanimous either on the part of the public utilities or those who are interested in regulating them. A public utility executive was heard to remark that he preferred "to fight it out with the municipality across the board" and arrive at a contract basis for utility operation. On behalf of Commission regulation though it is a recognized fact that a legislature cannot investigate the merits of individual cases as a Commission can. The Commissions are better able to see that their rules and regulations are observed. Municipalities are not in so good a position to act justly since they always represent themselves and are not so likely to be fair and impartial. The State Commissions have no interest in any local controversy; they may, therefore, act as impartial arbitrators. The State Commissions are better equipped to handle technical public utility problems because they are able to employ skilled staffs of technical men who devote their entire time to the duties of their various departments, while the local authorities cannot usually afford the services of such men. These are a few of the many advantages of state regulation over other methods. Even where a contract is entered into between a public utility and a city there is always the objection that changing conditions cannot be met as in the case of Commission regulation.

QUESTION

May utility companies make donations to charities?

ANSWER

Utility companies often do make donations to charities, but it has generally been held that such donations should not be charged to operating expenses. If made, they must be made at the expense of the stockholders and not the ratepayers.

A Hostile Committee Investigates a State Commission

Why the Michigan House of Representatives examined the activities of the Public Utilities regulatory body, and what it found

By RICHARD LORD

Back in the days when it was a fashionable sport for a Roman Emperor to persecute Christians, shrewd observers began to notice that with every persecution, the new sect seemed to take on new life. The horrors of the reign of Nero and Caligula, instead of stamping out this strange cult, only seemed to make converts out of previously good pagans. It was indeed among those to whom was intrusted the duty of killing off the Christians—such as the soldiers—that the heaviest proselyting occurred. These men, moved by the example of the martyrs, were inspired to join them until Tertullion exclaimed:

"The blood of the martyrs is the seed of the Church."

Public Service Commissions have been under fire from their inception. They have been attacked from all sides—first by utility interests that resisted regulation; then by interests that believed in the operation of utilities by the Government; then by local interests that wished to preserve home-rule regulation by municipalities or other political subdivisions.

Being under fire from all sides has not weakened the position of the Commissions. With each new attack they have emerged better and stronger. While no Commission has as yet been "martyred" by such attacks, it is significant to note that, like the praetorian guards of Nero, those entrusted by the state legislatures with the duty of investigating and exposing these bodies have been, in some instances, the most ardent converts to Commission regulation.

As previously pointed out in these pages,* there was an investigation some years ago by a hostile legislative committee into the activities of the California Commission. As a result, the committee acknowledged that many of the preconceived ideas of its members had undergone a complete change. The work of the Commission was commended in the warmest terms. Speaking of the "great public utility act," the committee said:

"It has worked well and is working today. Strengthen it rather than weaken it."

* See "The Break-Down of the State Commissions," by Henry C. Spurr; *Public Utilities Fortnightly*, February 21, 1929.

IN the same view writes Mr. R. F. McLaren, Assistant Secretary of the Montana Commission. He says:

> "At some time during, I think, every session of the legislature, it has been proposed to abolish the department, with the result that numerous investigating committees have been appointed by the assembly, and the best evidence of the functioning of the Board of Railroad Commissioners and its *ex officio* Public Service Commission, Irrigation Commission and Trade Commission, with jurisdiction over railroads, public utilities, flour mills, irrigation districts, natural resources, licensing of dealers in gasoline, etc., and supervision of common-carriers by motor vehicles, is, that after each and every session, we find ourselves with added departments and more duties to perform."

More recently Governor Roosevelt of New York has expressed the opinion that Commission regulation in that state is not working and has urged an investigation. Chairman William Prendergast of the New York Commission promptly replied:

"I love investigations, especially investigations by the legislature. So bring on your investigations."

Chairman Prendergast is evidently well informed on the history of such investigations in the past. His confident attitude is well warranted.

THE latest triumph of Commission regulation over the attacks of its opponents comes from Michigan. Michigan has an old and honored Commission. There have been suggestions that it might be a little better off if it had more jurisdiction but just the same it has performed some notable work.

Lately, however, there has been dissension among the Commissioners themselves. Former Chairman Sidney E. Doyle had begun to feel that there were other members of the body who were not taking their duties seriously enough. He preferred certain charges against the Commission resulting in the appointment of a joint investigation committee by the state legislators. These charges are best described in the resolution offered by Mr. DeLand in the Michigan House of Representatives on Friday, March 29, 1929, which, it might be noted, was Good Friday.

Journal of the House of Representatives, Session of 1929, No. 55, at page 573.

Mr. DeLand offered the following resolution:

House Concurrent Resolution No. 15—

A Concurrent Resolution authorizing an investigation of certain charges pertaining to the Michigan Public Utilities Commission.

Whereas, The Michigan Public Utilities Commission is a quasi-judicial Body, created by the Legislature of the State of Michigan, to guard and guide and protect the interests of the people of this Commonwealth in their dealings and relations with public utilities; and

Whereas, Sidney E. Doyle, a member of said Commission, on the 18th day of March, 1929, formally presented to Fred W. Green, Governor of the state of Michigan, charges relating to the manner wherein a majority of the members of said Commission disposed of important matters pending before it, a copy of which is hereto attached and made a part hereof, which raised serious question whether the Michigan Public Utilities Commission is functioning in the public interest, and demanded that his Excellency request the Honorable Senate to examine into the condition and administration of said Commission; and

Whereas, His Excellency facetiously disregarded said demand; withheld forwarding the names of his appointees on said Commission to the Senate for confirmation or rejection, consonant with his prior announced intention so to do; and thereupon instructed the Attorney General to draft a new law in relation to said Public Utilities Commission for adoption by this Legislature; and

Whereas, This Legislature cannot properly deliberate upon such proposed enact-

ment without examination and understanding of the administration of the present law; and

Whereas, The indicated advisability and necessity for the inclusion in such proposed enactment of provision for a Public Defender would seem to enhance the doubt whether the present Commission has acted in such capacity; and

Whereas, The power is granted, and the duty is imposed, by the constitution, upon the Legislature, while in session, to examine into the condition and administration of any public office seeming to require the same; and

Whereas, It is believed by large numbers of citizens of this State that the following definite and specific charges of said Sidney E. Doyle warrant such examination:

(a) That testimony of witnesses adduced before the Commission is no longer transcribed in each and every case and placed in the public file, as heretofore required by established rule since the creation of the Commission; that testimony may not be transcribed in any particular case only upon specific order of a majority of the members of said Commission:

(b) That in very important matters, to wit:

D-2366—Twin City Railroad Company,
D-2339—Detroit & Canada Tunnel Company,
D-2368—Eastern Michigan Railways,
D-2369—City Contract Company,
D-2370—Eastern Michigan Motorbusses,
D-2371—Eastern Michigan Toledo Railroad,
D-2301—Dixie & Northern Air Line,

a majority of the Commission have hastily authorized, without anything approaching adequate care, study, investigation, and inquiry, and without opportunity for public hearing and protest, the creation of public utilities and the issuance of securities totalling millions of dollars, in disregard of safe and sound procedure and in violation of the rule of the Commission, that no matter coming before it shall be heard and adjudged unless the same shall have been filed with the Commission for a period of at least seven days prior to action thereon:

That as a direct result of the suspension of such rule, said City Contract Company was legally established by order of a majority of said Commission, and would today be in possession of very valuable rights in the municipally owned street railway system of the city of Detroit, were it not for public spirit and intervention on the part of private citizens of Detroit:

And said Dixie and Northern Air Line would today have unrestricted right to sell its securities, were it not for the salutary service of the Detroit Better Business Bureau, a non-official body organized to protect the public against unwise investments;

(c) That in a very important problem involving railroad freight rates on sand and gravel consigned to the city of Detroit, the opinion of the Commissioner residing in said community was contemptuously cast aside; another opinion was prepared, and attributed, not to any Commissioner, but to an aide in the rate department; that upon claim being made to his Excellency, that such second opinion in truth emanated from an interested source outside of the Commission, no pursuit of such claim was directed, so that today, the claim remains unchallenged; the file remains dormant; and shippers and consignees of this State receive no adjudication, partial or impartial, of their rights;

(d) That Governor Fred W. Green endeavored to impose his executive influence upon Chairman Sidney E. Doyle during his consideration of the Detroit United Railway reorganization plan;

(e) That representatives of certain utilities, as early as December, 1928, a month prior to assembly of the Senate, openly stated that the appointment of said Sidney E. Doyle to the Michigan Public Utilities Commission would not be confirmed; a more correct utterance might have been, that the Senate would not be given an opportunity to confirm, or not to confirm, in view of his Excellency's public utterance that said name will not be submitted to the Senate, despite his own appointments now outstanding until June, 1931.

(f) That the requirement of Governor Fred W. Green, that Sidney E. Doyle establish his home in Lansing as a condition of continued membership upon the Michigan Public Utilities Commission, is an illegal imposition and an unjust subterfuge.

Now, therefore, be it and it is hereby

Resolved, By the House of Representatives, (the Senate concurring), that a joint legislative committee, consisting of four members of the House and three members of the Senate, appointed by the Speaker and the President, respectively, be authorized to examine into the aforesaid charges pertaining to the condition and administration of the Michigan Public Utilities Commission, to the end that it may be determined whether or not said Commission is functioning in the public interest; and be it further

Resolved, That said committee be given full power and authority to subpoena witnesses, administer oaths, and to examine any and all persons, records, and documents deemed proper by said committee, and to incur any necessary expenses, including those of witness fees, counsel fees, auditing, and stenographic services, in making such investigation, the same to be paid out

One of the Effects of Commission-Baiting

"PUBLIC Service Commissions have been under fire from their inception. They have been attacked from all sides—first by utility interests that resisted regulation; then by interests that believed in the operation of utilities by the Government; then by local interests that wished to preserve home-rule regulation by municipalities or other political subdivisions. . . .

"IT is significant to note that, like the praetorian guards of Nero, those entrusted by the state legislatures with the duty of investigating and exposing these bodies have been in some instances the most ardent converts to Commission regulation."

of the general fund of the state, not otherwise appropriated, upon itemized vouchers, duly certified by the Speaker of the House of Representatives and by the President of the Senate; and be it further

Resolved, That said committee report its findings to this Legislature prior to adjournment of this session.

The Speaker ruled that the letter attached to the resolution was a personal communication from a private individual and could not be received.

No one could say that the joint committee organized to investigate the Commission at the direction of such a resolution would be over-indulgent or prejudicial in favor of the Commission. Not if we assume that they were faithful to their duty. Without discussing the merits of the controversy, here is the report of the committee. No further comment is necessary. It speaks for itself.

Journal of the House of Representatives, Session of 1929, No. 79.

REPORTS OF SELECT COMMITTEES.

Lansing, Michigan, May 2, 1929.

To the Legislature of the State of Michigan:

The undersigned Legislative Investigating Committee appointed under and by virtue of House Concurrent Resolution No. 15, beg leave to report as follows:

Your committee duly met in the Senate Chamber in the Capitol in the City of Lansing and formally organized, electing Senator Ari H. Woodruff, chairman, Representative Miles M. Callaghan, secretary, and Representative Frank P. Darin, legal counsel.

The meetings were thereafter held in the hearing room of the Michigan Public Utilities Commission in the State Office Building at Lansing. The services of William H. Smith, official stenographer of the Fifth Judicial Circuit of Michigan, was obtained to transcribe the testimony taken before the committee.

At such meetings your committee invited and welcomed the attendance of all those interested or having any knowledge of the facts and charges set forth in said resolution. Such meetings extended over a period of about two weeks and resulted in the typing of testimony included in a record of five hundred nineteen (519) pages.

Your committee finds and reports that the result of the testimony taken discloses no foundation in fact to support the charges set forth in House Concurrent Resolution No. 15.

We find that certain rules of the Michigan Public Utilities Commission have been from time to time amended by resolution of the Commission and that the rules have been suspended in the consideration of certain cases before said Commission, but that such action on the part of the Commission was in no way detrimental to public interest.

That the conclusions arrived at by a majority of the Commission in the cases specified and enumerated in the concurrent resolution so far as our record dis-

closes indicates nothing irregular or contrary to State interest.

We find that the limited executive influence brought to bear upon the Michigan Public Utilities Commission was prompted by the desire to be of service to the Commission and in the interest of harmony and efficiency. Our record discloses justification for the demand of Governor Green that all members of the Commission reside in the City of Lansing.

We find a general lack of harmony in the work of the Commission, brought about by the differences of opinion of the members thereof in reference to the method of practice and procedure and policy of the Commission, which opinions have been prompted by honest and sincere motives.

Respectfully submitted,
Ari H. Woodruff,
Senator.
Calvin A. Campbell,
Senator.
Geo. Leland,
Senator.
Frank P. Darin,
Representative.
Clarence D. Birkholm,
Representative.
Miles M. Callaghan,
Representative.

The question being on the adoption of the report of the Select Committee,
The report was adopted.

IMMEDIATELY after the report was filed by the investigation committee, Governor Green appointed Hon. Ora M. Cummins of Lansing and Hon. Russell A. Forman of Detroit to take the places of Sidney E. Doyle and Byron P. Hicks. The other three Commissioners, Robert H. Dunn, James Bice, and Samuel O'Dell, with the new appointees, were confirmed by the state senate on May 7th, and the five members will serve until June 13, 1931.

These remarks are intended simply to call attention to the vindication of Commission regulation in Michigan by a hostile investigation committee, and are made with all due respect to unquestionable, just, and honorable motives of the former chairman, Mr. Doyle, to whom the committee graciously referred in its report:

> "We find a general lack of harmony in the work of the Commission brought about by the difference of opinion of the members thereof. . . . which opinions have been prompted by honest and sincere motives."

BUT while the honesty and sincerity of former Chairman Doyle is not to be questioned, it is certain that he has performed a real service to the principle of Commission regulation by gaining for it the unqualified endorsement of the Michigan legislature. He has caused it to come forth from the investigation strengthened and acclaimed, just as the Commissions in other states have gathered strength with each assault.

PUBLIC UNDERSTANDING DOES NOT KEEP PACE WITH THE ELECTRICAL INDUSTRY

"THE future electrical development of the United States is bound to be enormous. No one can prevent it, and all must profit by it. The danger is that the growth of our industry will outrun public understanding; that people will see and fear our size without understanding our service. We must make it clear to all that progress consists in lifting the burden of routine and drudgery from their shoulders to the tireless shoulders of the dynamo; that every loafing stream is loafing at the public's expense; that every added kilowatt means less work for some one, more freedom, a richer chance for life."

—OWEN D. YOUNG

The Bus Versus the Street Car

Some of the questions that must be answered before a State Commission may issue a franchise to a proposed motor vehicle transportation company that will compete with the local railway company.

A Letter of Inquiry and a Reply

In Baltimore there is an organization known as "National Housewives, Incorporated." During the past few weeks the ladies of that group have been agitating the project of establishing new bus lines in their city, to compete with the United Railways, which operates the local transportation lines. They have written to the National Electric Railway Association for data, and they also have made inquiries of the mayor of Baltimore, to find out if the city would be willing to back either a municipal bus line or a privately owned bus line. More recently the secretary of the organization wrote to the Chairman of the Public Service Commission of Maryland, Mr. Harold E. West, to determine the attitude of that body toward their idea.

Both the letter of inquiry and the reply embody such points of interest that they are here reproduced. The National Housewives' letter follows:

Mr. Harold E. West, Chairman,
Public Service Commission,
Baltimore, Maryland.
My dear Mr. West:—

As legislative chairman of the National Housewives, Inc., I am writing to ask if you and the other members of the Public Service Commission would allow a financially responsible bus company to operate busses all over the city in competition with the United Railways.

We are very much interested in cheaper transportation for Baltimore, and we hope you are too.

Hoping to hear from you at your earliest convenience, I am,

Very sincerely yours,
Aimee Weber,
Legislative Chairman, National Housewives, Inc.

The reply is printed below:

Miss Aimee Weber,
Baltimore, Maryland.
Dear Miss Weber:

I have your note, asking whether "the Public Service Commission would allow a financially responsible bus company to operate busses all over the city in competition with the United Railways."

Of course you understand that such an operation as you suggest would mean the elimination of the present system of street car transportation. Therefore, the Public Service Commission would not grant permission for the establishment of such bus operation as

you suggest, unless it could be conclusively proved:

1. That the elimination of the present street railway system and the substitution of a system of bus transportation would be for the best interests of the public.

2. That a bus system such as you suggest to replace the railways could and would give a service as frequent, as comprehensive and with a capacity as great as that of the railways, reaching all sections of the city and suburbs, and operating unprofitable as well as profitable lines.

3. That the rates of fare would be lower than the rates now charged by the railways company.

4. That free transfers from one line to another would be given to the extent that such transfers are now given by the railways company.

5. That the financial resources of the suggested bus company be sufficient to guarantee the permanence of the suggested operation.

6. That the suggested bus company contribute to the city and state an amount in taxes equal to that paid by the railways company, including a sum of more than one million dollars annually for the maintenance of the city parks.

Very truly yours,
HAROLD E. WEST,
Chairman.

It is a Monopoly's Duty to Serve All Comers

"If a company owed no duty to those living within its territory, and could act its own pleasure unrestricted and unenlarged by law or other rule of conduct, the result would be that each such company would, within its territory, have all the authority of a feudal lord, demanding and receiving unmerited and arbitrary tribute, yielding in return those things, and only those things, which his capricious pleasure suggested. Such, however, is not in accord with present knowledge of law, equity, or modern enlightened practice. The enjoyment of the monopoly compels the performance of resultant duties. If a utility would occupy, exclusively, a given territory, it must serve adequately, fairly, fully, this same territory. For the very reason that it is the only one in the field, it is under imperative obligation to serve, within reasonable bounds, all whom it finds within its field."

—*Statement by the Maine Commission.*

What Others Think

The Changing Attitude Toward the Problems of Railroad Consolidations

THE special publication issued by the *Political Science Quarterly* contains a series of addresses delivered at the semi-annual meeting of the Academy of Political Science on April 24, 1929, on the topic of Railroad Consolidation. Many well known authorities discussed various phases of this important subject. While the special factors of the steam railroad consolidation problem are little understood by the public, the desirability of some sort of a unification of railroad lines is appreciated. Consolidations are proceeding with increased velocity in the field of private enterprise, and also in the utility field. It appears to be the order of the day, and based on sound economic principles. In the steam railroad field consolidation has met with many obstacles.

In the various articles on the subject in *Political Science Quarterly,* the changing attitude of the public toward railroad consolidation is alluded to several times, and an article by Winthrop M. Daniels, professor of transportation, Yale University, and former Commissioner of the Interstate Commerce Commission, deals specifically with that subject. Professor Daniels says:

> "Railroad consolidation, after all, is only a chapter in the larger history of industrial integration. Much the same type of opposition that earlier developed against the growth of industrial combination has, of course, been encountered by railroad carriers.
>
> "In both instances the opposition has centered in the apprehension that the public interest is jeopardized by any departure from relentless, undeviating, and all-pervasive competition between the multitude of relatively small industrial units. The proverbial philosophy ran to the effect that in the multitude of competitors there is safety; or, to use another metaphor, that competition was a tender plant, best cultivated if set out in a large number of containers.
>
> "It need not, therefore, surprise us that a quarter of a century ago the attitude of public opinion toward railroad consolidation was one of hostility, and the attitude of law was one of prohibition."

IT was thought by many persons familiar with the railroad problems that the Sherman Anti-Trust Law did not apply to railroad consolidations, but the Supreme Court held that railroads were within the provisions of the act. This legislation, therefore, interfered with unification for a number of years.

The public, however, has come to revise its ideas as to the saving grace of competition in matters of public service, and to substitute for competition the doctrine of regulated monopoly. This change of attitude has found expression, so far as the railroads are concerned, in the Transportation Act of 1920. This act of Congress relaxed the absolute prohibition against pooling and admitted of the possibility of consolidation under certain provisions of the law, with the approval of the Interstate Commerce Commission.

Walker D. Hines, former Director General of Railroads, commenting on the consolidation provisions of the Transportation Act of 1920, says:

> "I doubt if we can find in the legislative history of our Federal Government a more striking instance of complete reversal of policy. From a policy of practically unrestrained and unqualified interference with anything in the nature of rail combination where an element of competition might be involved, the Government turned around to a plan which affirmatively provided for all forms of rail combination

when approved by the Interstate Commerce Commission as being in the public interest."

For the benefit of those who still cling to the idea that competition should be maintained in the railroad field, it is stated that competition will still continue under the policy of consolidation of the railroads into a comparatively few groups of carriers. On this point Mr. Hines says:

"In my judgment the policy of consolidation need not arouse any fears that there will not remain ample competition, because I would defy anybody to arrange the railroads of this country in a few large systems among which there would not be the most effective and far-reaching competition, competition of a salutary character which at the same time would eliminate some purely wasteful duplications of service which exist now without in any way giving the public really better service."

J. P. Blair, general counsel of the Southern Pacific Company, gives an interesting account of the beneficial result in one instance of the change of attitude toward consolidation expressed in the Transportation Act of 1920. He says:

"In 1922, the Supreme Court of the United States, to our consternation and, I may say, to our amazement, declared that the common control of the Central Pacific Railway Company and the Southern Pacific Railroad Company, which had existed for fifty years or more, was in violation of the Sherman Law, and ordered the immediate termination thereof.

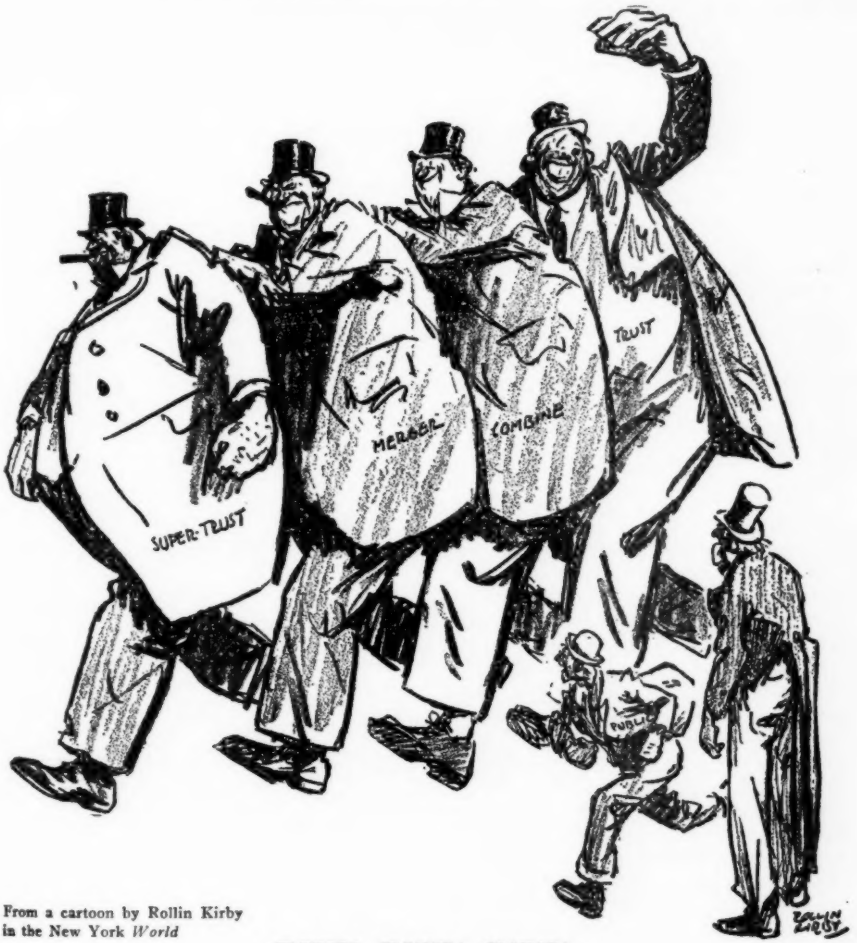
"In order that you may realize what is meant by the rigid, implacable application to railroads of the anti-trust laws it is necessary for me to describe the character of the system of railroads which the Supreme Court, under compulsion of the Sherman Law, decreed should be dissolved. The Central Pacific lines and the Southern Pacific Railroad lines had always been under a common control. Beginning about 1870, the two sets of lines had developed together as a single interdependent system. Born of a common parentage and fed from a common pap, they were intended and expected always to be mutually dependent members of the same family. You can, therefore, readily understand that their separation into two parts would have resulted not in two self-sufficient systems, but in two maimed and incomplete parts of what had been a single system. The dismemberment which the court directed to be made was in reality a capital operation, likely to be fatal not only to the Southern Pacific system, but to the transportation needs of the communities served by the system.

"From the death sentence that had been pronounced by the Supreme Court the Southern Pacific Company fled for refuge to the Transportation Act and prostrated itself before the altar it found in paragraph 2 of Section 5. We applied to the Commission to legalize, in the exercise of its powers under the Transportation Act, the common control which the Supreme Court had declared unlawful under the Sherman Law. In this application we were actively assisted by the several states and communities in which our system lines were located. Their consternation over the decree of dismemberment rivaled ours, since they saw that it meant a mutilation of the transportation machine upon which they were very dependent and the Constitution of which they had never complained of. The Commission had no difficulty in finding as a fact that the common control was in the public interest; that the benefits of any competition that might be gained by the dismemberment of the system were as nothing compared to the benefits from the continued operation of the lines concerned as one system. It had the courage as well as the good sense to render an order approving and authorizing the common control, which was in the form of stock ownership and operation under leases by the Southern Pacific Company of both sets of lines.

"Armed with this order of the Commission we appeared before the lower court to which the Supreme Court's mandate was directed. There we were met by the solicitor general with a drastic decree of dismemberment drafted pursuant to the mandate.

"To make a long story short the lower court had also the intelligence and the courage to recognize that the order of the Commission under the later act of Congress superseded the decree of the court under the earlier Sherman Law; and the final decree adopted and confirmed the Commission's order. Thus the country was saved, including the Southern Pacific system."

One of the many difficulties of the problem of the complete consolidation of railroads as contemplated by Congress is the necessity of taking care of the weak roads. There is some difference of opinion about this. Some advantages and some disadvantages would result from uniting a strong and weak railroad. Speaking for the weak railroads, Bird M. Robinson, President of



From a cartoon by Rollin Kirby in the New York *World*

CLUMP! CLUMP! CLUMP!

the American Short Line Railroad Association, says:

"From the beginning the short and weak roads have, generally speaking, been pioneers and have opened up vast sections of undeveloped country. They have supplied material for all kinds of plants and enterprises, and they continue to render that very valuable service for the good of all the people. Many of them have rendered such services, from time to time, at a loss, and some of them at a continuous loss; as a result they have continued to fail financially, and it is becoming more and more apparent that the public, if it is to continue to receive their services, must see to it that prompt, proper, and adequate provision is made for their preservation through the consolidation of all into a few well balanced and strong systems.

"If the public in its own interest demands it, the Interstate Commerce Commission will without doubt execute the law as intended by Congress, and decline to permit any merger, unification, or consolidation unless and until the weak roads are satisfactorily included. Thus the great problem of the strong and the weak railroads will be solved. We will then have

a few well balanced systems that can pay their labor adequate compensation and render most efficient service at the lowest possible cost consistent with a fair return to their owners."

IN addition to those already mentioned, other contributors to the discussion whose remarks appear in *Political Science Quarterly* were Pierpont V. Davis, vice-president of the National City Company of New York; W. N. Doak, national legislative representative of the Brotherhood of Railroad Trainmen and editor and manager of the Brotherhood organ, *The Railroad Trainman;* John J. Esch, former Interstate Commerce Commissioner; United States Senator Simeon D. Fess of Ohio; Emory R. Johnson, professor of transportation at the University of Pennsylvania and dean of the Wharton School of Finance and Commerce; Congressman James S. Parker of New York; George G. Reynolds, lawyer of New York; Edwin R. A. Seligman, McVickar professor of political economy at Columbia University and an editor of the *Encyclopedia of the Social Sciences;* Richard Waterman of the Railroad Bureau of the United States Chamber of Commerce; and Daniel Willard, president of the Baltimore and Ohio Railroad.

—RICHARD LORD

A Mathematical Analysis of the Principles of Valuation

UNDER the title of "Principles of Valuation," J. A. Grimes, E. M., valuation engineer of the Bureau of Internal Revenue, Treasury Department of the United States, and W. H. Craigue, E. M., valuation engineer of the Income Tax Unit, Treasury Department, have produced, not a treatise on the principles of valuation of utility property for rate-making purposes, (as one might be led to believe from the title) but rather a discussion of mathematical principles employed in the valuation of properties on the basis of probable income.

The objective of the book is the development and comparison of the several mathematical principles which are adapted to the valuation of future income and a discussion of the principles with respect to their applicability or inapplicability to commercial usage. The authors say:

"It must be recognized that many sales and purchases of income-producing properties will be consummated without resort to a mathematical analysis of the elements of value. Numerous transactions occur on the basis of comparisons between the property under consideration and other properties of essentially similar nature which have recently been sold at various prices or which may be acquired at known prices. Other transactions involve the necessity of the owner of the property to sell or the extraordinary need of a particular buyer for a specific property. Still others are purchased on speculation at prices known to be exorbitant, with the expectation that buyers can be found at still more exorbitant prices. But the basis underlying all other types of valuation is the fundamental method requiring a mathematical analysis of the present worth of future expected income, and generally known as the capitalization method. Briefly, this method consists in the determination of a value which will be returned, together with a suitable rate of interest, by the future income which may be expected from the property. Such a method is of general application, while others are of limited local or temporary utility, and it is essential that any sound valuation should consider this basic process as well as derived modes of appraisal."

BEGINNING with the premises and mathematics of the valuation of income, the authors then set forth types of valuation formulas for terminable income and for perpetual income, together with arithmetical solutions and illustrations of income allocation. They then discuss valuation of income, subject to an income tax, interest rates, and the discount for hazard method of valuation.

The work contains a valuable appendix of yearly interest rates, tabulations, and valuation tables.

"Principles of Valuation" is a valuable treatise for the use of experts familiar with the mathematics of valuation, and is no doubt intended only for their use. It is not a book for laymen.

—D. L.

PRINCIPLES OF VALUATION. By John Alden Grimes and William Horace Craigue. New York: Prentice-Hall, Inc. 274 pages. 1928. $10.

The Joker in Present-Day Efforts to Regulate Railroad Rates

THE concentration of the anthracite deposits in an area of approximately 476 square miles in Pennsylvania has enabled a few giant railroad corporations to exercise quasi-monopolistic powers over the anthracite coal industry. Control over the avenues of transportation from this limited field to tidewater has been augmented by ownership or control over a large per cent of the total coal bearing lands. About two billion dollars are engaged in the production and transportation of anthracite coal and though many changes have been necessary in recent years as a result of governmental activities, this field of industry is still largely dominated by the same large corporations.

Dr. Jules I. Bogen, believing that "we can greatly improve our understanding of the economic growth of our country by studying individual business enterprises," presents a study of the growth and development of the anthracite railroads. In this study the author was doubtless greatly aided by his past connections with the *New York Journal of Commerce* as Railroad Editor.

Chapter I is a concise statement of the history and progress of the early canal companies which were organized to transport coal to the markets. After pointing out the early struggles of the canals and the rapid increase in the market for coal due to the advance in the price of wood and increased industrialism, the author shows why the theoretically practical method of transporting coal by canal had to give way to the railroads because of the difficulty of canal operation in mountain streams and the winter tie-ups.

In Chapters II to VII the author tells the story of the history of the development of the five principal anthracite railroads. Each is dealt with as a unit, showing the effects on the companies of the economic and financial periods of history.

THE question of segregation of coal properties from the transportation companies has been the most recent development in the anthracite industry. The author felt that the importance of this question merited a separate chapter for its discussion. Chapter VIII shows clearly some of the major steps that brought about regulatory measures and the battle for segregation.

The earliest action on the part of the transportation companies that brought about disapproval of the public was the discrimination against private operators by the canal companies. After the growth of the railroads, the companies now "fixed tolls cunningly devised to stimulate production without promoting the prosperity of the producer."

Out of such practices grew the evils of unregulated competition, and the public soon found that "the once desired panacea of unregulated competition in both coal mining and transportation was proving of little benefit to the consuming public while it occasioned great loss to all concerned in the industry itself."

Out of the profits resulting from the Civil War activities, large additional coal bearing lands were purchased by

the respective roads which soon came to control about 80 per cent of the total anthracite production. Competition between the roads still continued and the idea of combination developed as an aftermath of disastrous competition. In this industry, as with most others, it was but a step from a few large competing units to combination.

Such combinations were first attacked by the states and attempts were made to separate the producing activities from that of transportation. The states failed. The evils of the industry continued and, subsequently, figured largely in congressional debates that terminated in the Sherman Anti-Trust Act of 1890 and again in the Hepburn Act of 1906.

AFTER the passage of the Hepburn Act the Federal Government took up the struggle where the states had left off. The first cases brought to the courts by the Government attacks were largely directed against joint ownership of coal transporting and coal producing activities as a violation of the Commodities' Clause of the Hepburn Act. Failing in the early cases to bring about any actual dissolution, the fight was continued under both the Sherman Anti-Trust Act and the Hepburn Act. In the Reading Case (253 U. S. 26, 64 L. ed. 760, 40 Sup. Ct. Rep. 425) and in the Lehigh Valley Case (254 U. S. 255, 65 L. ed. 253, 41 Sup. Ct. Rep. 104) the Supreme Court spoke unmistakably against joint ownership. Part of the battle had been won.

The theories of the author on competition between railroads are quite in harmony with those advanced by Dr. Walter W. M. Splawn in his book "Government Ownership and Operation of Railroads." Both feel that railroads are possessed with certain monopolistic powers of position, and to force competition between them is of doubtful advantage if at all possible. The practice of trying to force competition between railroads has given way to the merger plan as is being worked out by the Interstate Commerce Commission. This plan will destroy the identity of the anthracite roads as separate corporate entities and they will become links in great trunk lines.

ONE of the most important teachings in Chapter VIII is the difficulty of any effective control or regulation of railroad rates, practices, or discriminations as long as joint ownership of coal carriers and coal producers was permitted. Although the author is dealing only with the anthracite carriers, the reviewer feels that the same principle carries over to all the other railroads. The joker of the present day attempts to regulate rates is that no account is taken of income other than from railroad activities.

Although segregation has been brought about along conventional lines by the respective railroads, and though no general illegal combination seems to exist at the present day, the author clearly points out in the last pages of Chapter VIII that all the elements that accompany combination are still in existence. This is made possible by interlocking of economic interests in which the personal element may be wholly lacking.

Chapter IX is devoted to a summing up or general conclusions on the preceding points brought out, while Chapter X deals with the future possibilities of the anthracite railroads.

Not only has the author shown clearly how the various economic periods in the history of the United States has reflected on the anthracite railroads, but he has given one of the clearest discussions of the struggle between the Government and the anthracite interests that it is probable one could find in as short and concise a form. If the reader does not have time to read carefully the entire book, the reviewer recommends that he read at least the first and the eighth chapters and the conclusions of the author.

—JOHN W. BOATWRIGHT

THE ANTHRACITE RAILROADS. By Jules I. Bogen. New York: the Ronald Press. 281 pages. 1927. $4.50.

The March of Events

California

Probe of Utility Action in Election

THE Commission has started an investigation into the activities of the local electric utilities in Los Angeles in connection with their opposition to power bond propositions which were defeated at the June 4th election.

A hearing in the matter was adjourned on June 19th with a ruling that the utilities by August 1st would compile information wanted by the Commission in their probe of the power interests. The compilation must contain:

1. Number of employees used in election work.
2. Time spent in such work.
3. Amount of money spent by the corporation, and
4. To what account these moneys were charged.

This information will be studied, and if satisfactory, the proceedings will be abandoned. If unsatisfactory, however, the public hearing will be resumed on September 4th.

On advice of counsel, a utility witness refused to answer certain questions at the hearing. At the outset of the hearing representatives of the Southern California Edison Company, it is reported, declared that it was physically impossible to give detailed accounts of the operations of its employees and their expenditures at that time. Also there was considerable doubt as to whether the company would in the future be able to give all the information demanded by the Commission.

The auditor for the Southern California Edison Company testified that the accounts were still in a very fluid state. He said that all expenditures in connection with the election had been charged to a "working account," and when asked if they would ultimately be charged to an operating account, he said his instructions were not to do so.

There was some discussion over the meaning of the term "political activity." Attorney W. P. Mullendor, counsel for the Southern California Edison Company, said:

"We stand squarely for this definition. Bond issues which have a direct connection with the business of the Southern California Edison Company are of vital concern to us, and our activities in educating the public are not political issues as we commonly understand the word 'political.'"

The basis for the investigation is said to be to discover whether or not the campaign expenses were charged as operating expenses to be met by ratepayers. The interest of the Commission is centered not only in the actual campaign expenditures but also in the use of employees in the active compaign. It has been pointed out that, while the companies are free to spend any of their surplus earnings in any manner they see fit, in the case of employees devoting their working time to election work "that is something else again," since wages are charged to expenses.

Competition for Natural Gas Business

A FIGHT between the Western Natural Gas Company and the Pacific Gas & Electric Company for the natural gas business of the San Joaquin and Sacramento valleys and delta industrial district is under way. The Western Company has applied for a certificate of public necessity to build a pipe line for this service. This is opposed by the Pacific Company.

Representatives of the Western Company, we are informed, have prophesied that consumers would receive natural gas at prices "ridiculously low" in comparison with present schedules if the company is permitted to serve.

Although the Western Company does not propose to bring its pipe lines to San Francisco, says the San Francisco *Examiner*, it has offered to give the Pacific Gas & Electric Company a stand-by service which will permit the latter company to serve a straight natural gas of 1,100 units of heating value, instead of the 770 units now proposed. The present heating value of gas used in the Bay area is 550 units. The rates for the 770 unit gas are in dispute.

Water Rights Upheld

YEARS of litigation between the city of San Diego and the Cuyamaca Water Company, says the San Francisco *Examiner*, has been ended with a decision by the state supreme court upholding the city's claim of a prior and preferential right to the waters of the San Diego river. The city's rights are based on grants given under the old Spanish and Mexican law to the "Pueblo of San Diego."

Colorado

Sale of Power Company

NEGOTIATIONS whereby the Mountain States Power Company assumes full ownership and management of the Lander Electric Light & Power Company have been concluded, according to an article in the Denver *News*. In addition to becoming the owner of the franchise and distributing system of current in Lander, the purchasing concern also has acquired the store and office building of the Lander corporation, together with the stock of electrical merchandise on hand.

A new schedule lowering rates from 22 to 30 per cent was to be filed with the Commission.

Electrification of the coal mines at Hudson is a proposed outlet for absorbing surplus power of the company as soon as its high-voltage line from the Government reclamation project at Pilot can be hooked up with the Sinks Canon loop. There are also plans for extensions of power service for farms in the outlying districts and for the extension of a high-voltage line from the Sinks Canon supply plant to the Louie Lake and Atlantic City mining district.

Connecticut

Reduction in Gas Charges

GAS consumers in Greenwich received a welcome surprise on June 18th in the form of an announcement from the Greenwich Gas Company of a reduction in rates, says the Stamford *Advocate*. The rates became effective July 2nd, the third anniversary of the inauguration of gas service in Greenwich.

The revision of schedules, it is reported, will mean a saving to Greenwich users of more than $10,000 a year. The company has indicated that further reductions may be possible if business continues at its present rate.

The new schedules will effect a saving especially to those who make use of gas for water heating, refrigeration, incineration, and other conveniences. It is designed to encourage a wider use of gas by reducing the cost after certain minimum amounts have been used.

Traction Fare Hearing

A HEARING has been set for July 29th in the investigation by the Commission of the proposal of a 10-cent fare for street car service. Since the filing of the new proposal for higher fares, there has been considerable public interest in the proposition. Some organizations have strenuously voiced their objections to a higher rate.

The Commission has laid down rules for the expedition of the hearing and shortening of the record. It is evident, says the Washington *News*, that the Commission does not intend to permit parties to the hearing to ramble in introducing voluminous testimony, exhibits, and arguments. Rules of evidence are to be more strictly applied.

Last year when the subject of fares was before the Commission, it was stipulated that the record of testimony could be used for what it might be worth, preserving the right of the company or other interested parties to add to it. Concerning the record, the present Commission has adopted a rule stating:

"Excerpts will be specified by page and line numbers. Counsel desiring to introduce such evidence will furnish the Commission and opposing counsel with a statement of the evidence to be offered. On such offer it will be understood that if desired by the Commission or counsel the witness will be recalled for further questioning."

A suggestion comes from the American Association of Engineers, Washington Chapter, which passed a resolution opposing any raise in car fares, that if additional revenue is required it should be obtained by reducing the 4 per cent gross earnings tax now paid in lieu of a franchise tax.

District of Columbia

Commission to Study Appliance Business

THE new Public Utilities Commission, according to a report in the Washington *Post*, is to study the appliance businesses of the gas and electric companies with a view to determining whether these enterprises result in an extra burden on consumers of gas and electricity.

There is no question of the legal right of the utilities to sell appliances, according to the prevailing opinion. This business the companies justify on the ground that the more appliances they sell to consumers, the greater the consumption will be.

This appliance business of public utility companies, however, has been challenged in the past by private business concerns offering the same type of equipment. It has been the subject of agitation and bitter fights in many sections of the country, with the utility corporations on the one side and the private businesses on the other side of the question.

The private businesses complain that the appliance business of a utility company amounts practically to unfair competition because the utilities make their gas and electric consumers pay a part of the cost of their appliances. The utilities deny this and direct attention to the fact that they keep separate sets of books for their appliance businesses and their utility business.

Florida

City Light Rates to Be Investigated

THE city commission of St. Petersburg has started an investigation of local light and power rates of the Florida Power Corporation, which, according to charges of Commissioner R. Veillard, are both "too high and discriminatory."

Director of Utilities O. F. Fraze, Sr. has been appointed a committee of one to obtain the data on local light and power rates to be submitted in a later report, says the St. Petersburg *Independent* in a recent article on the situation.

Illinois

City Renews Fight for Bus Control

AN attempt to obtain a rehearing before the Illinois supreme court in the matter of motor bus control was started by Corporation Counsel Ettelson on June 20th. Mr. Ettelson, says the Chicago *Evening Post*, has indicated that if the high court denies a rehearing he has another card to play.

The supreme court reversed and remanded a decision of the superior court which held that motor carriers must obtain specific grants from the city council. A constitutional provision requires traction companies to obtain consent of the council before tracks can be laid on public streets, but it seems that this does not affect motor bus operation. The corporation counsel is reported as declaring that there was precedent established by which the city would be justified in seeking to carry the case to the United States Supreme Court.

Mr. Ettelson has stated that the decision does not affect the traction question.

Chicago Telephone Franchise

THE old franchise for telephone operations in the city of Chicago expired last January but it was not until June 19th that the subcommittee of the council committee on gas, oil, and electricity seriously considered the matter of a new franchise.

On that date the committee was making comparisons of the old ordinance with a new proposed ordinance offered by the company. This draft is in the form of a fixed term grant for an undesignated number of years, but provides that it shall continue in force thereafter until either the company or city gives twelve months' notice of its desire for a new franchise.

In reply to a query by the aldermen, it is stated that William P. Sidley, attorney for the company, informed them that the company would like to have the franchise run for about twenty-six years so that the right

to operate would cover the period when company bonds fall due.

Although there is a limitation of twenty years for franchises of street railways, we are informed that no added legislative authority is needed to grant a franchise for twenty-six years in the case of a telephone company.

Alderman B. A. Cronson, chairman of the subcommittee, according to the Chicago *Tribune*, pointed out that about two-thirds of the old ordinance had been eliminated, to which Attorney Sidley replied:

"That is because the state, since our 1909 ordinance was passed, has created the State Commerce Commission to regulate rates and service removing that power from the city. That is the reason we have suggested discussion of the question of free service which we have supplied the city hall and certain public offices at a cost of about $130,000 a year. We are not opposed to a continuance of that policy so far as principle is concerned, but the state law prohibits discrimination and free service and makes the company liable to severe penalties."

Indiana

Telephone Company Asks Higher Rates

A PETITION has been filed by the Southern Indiana Telephone & Telegraph Company requesting the Commission to hold a hearing to inquire into local rates. The company is operating under rates now which have been in effect since 1922, but states that increased operating costs require a readjustment.

In addition to the matter of rates, the petition asks a change in payment rules and regulations. It points out that the present practice in regard to the time of payment and the discontinuance of service for nonpayment is unjustly discriminatory and inadequate, and that proper rules and regulations with regard to payment should be established in order to remove discrimination against patrons who pay their rates promptly and in favor of patrons who are delinquent in payment.

Louisiana

Rayville Gas Case

WHAT is termed one of the most important public utility cases in the history of Louisiana went to trial in the district court in Baton Rouge, June 15th. The Rayville Gas Company, Incorporated, was seeking an injunction to restrain the Commission from stopping the gas company's operations in the community.

The Louisiana Commission operates under constitutional provisions giving it the power to regulate public utilities, but it has been the contention of the gas company that the Commission is not authorized to prevent it from rendering service without securing the consent of the Commission. The Commission ruled against the company and the case is now before the court for decision.

The controversy originated in Richland parish. The Richland Gas Company for some time had been supplying gas to the town of Rayville, which has a population of about 2,000. Recently the Rayville Gas Company was organized and installed its pipes and distributing system at a cost of about $17,000. This brought about an appeal to the Commission by the Richland Company.

Massachusetts

City Plant Probe Awaits Court Ruling

THE Board of Aldermen of Holyoke some time ago appropriated $10,000 for an investigation into the affairs of the gas and electric department. Taxpayers then brought suit to restrain the expenditure of this money, and a demurrer was filed in opposition.

Judge Frederic B. Greenhalge, on June 20th, reported the case to the supreme judicial court after sustaining the demurrer. If his decree is affirmed by the higher court, that will end the case, but if the higher court should reverse his decision and overrule the demurrer, it would mean that the taxpayers would be upheld in their efforts to

prevent the expenditure of the appropriation.

This means, says the Springfield *Republican,* that there cannot be any expenditure of the appropriation for the purpose declared until some time in the Fall, as the supreme court in the natural order of things would not get the case until the September sitting for Hampden county. In the meantime a temporary restraining order remains in force against the expenditure.

Hearing on Gas Contract

THE Department of Public Utilities on June 20th held a hearing on the petition of the Boston Consolidated Gas Company for approval of a contract for the purchase of gas from the New England Fuel & Transportation Company.

There was opposition by Attorney Wycliffe C. Marshall, of Watertown, who introduced exhibits tending to show that, through an interlocking directorate, the Boston Company and the Fuel Company are one and the same organization. In this respect, he declared, the same men are approving the contract for the two organizations.

Attorney Richard H. Holt, appearing for the gas company, told the Commission that the company is authorized by law to buy gas only when the price is less than what it would cost the company to make it. He stated that the new contract would expire on June 1, 1930.

Like the previous contract, he said, it provides that the purchase price shall be 31 cents per thousand cubic feet and that the only change in the contract is the provision requiring the Fuel Company to supply at least 56,000,000 cubic feet each calendar week instead of 24,500,000 as in the last contract. The president of the gas company testified that it would cost the company 34.93 cents per thousand cubic feet for the utility to manufacture the gas.

Michigan

Dispute over Failure to Give Notice of Hearing

A LETTER charging negligence on the part of Detroit city officials, rather than the Commission, says the Detroit *News,* for failure of the city to have representatives at the hearing of the Dearborn telephone rate case has been sent to Clarence E. Wilcox, corporation counsel, by J. Carl Shiel, secretary of the Commission.

The letter, the *News* continues, answered a protest made by Mr. Wilcox over the Commission's alleged failure to notify the city that the hearing to remove the toll rate from Dearborn-Detroit telephone calls had been set. The Commission's secretary is reported as saying that he told the Commission while the hearing was in progress that Detroit had been notified, but it was not represented at the hearings.

Any petition for the reopening of the hearing must be made by the corporation counsel, it is said, and if it can be shown that notice was not received by Detroit officials, it has been indicated that the case would likely be reopened.

New Hampshire

Appropriation to Fight Higher Rates

AN appropriation of $1,000 was made on June 24th by the Laconia city government to carry on the city's opposition to a proposed increase in gas rates filed with the Commission by the Public Service Company of New Hampshire. The funds will be used, says the Laconia *Citizen,* for the hiring of an accountant to go over the records of the local branch office relative to the users of gas in the city, and to ascertain how the proposed rate will affect the city when considered as a whole.

The council was informed by the city solicitor that he had asked for a countenance of hearing on the case but that he doubted that the Commission would come to Laconia to hold the hearing. During the discussion one of the councilmen made a motion to drop the rate case, explaining that it seemed impossible to go ahead as planned, but when the vote was taken he voted for the appropriation.

New Jersey

Electrification of Railroads

A CONTRACT has been entered into with Public Service providing for the electrification of the Delaware, Lackawanna & Western Railroad. The contract covers a supply of current for twenty years between Hoboken and Maplewood. The Jersey Central Power & Light Company and the New Jersey Power & Light Company will supply the requirements beyond Maplewood.

Public Service will furnish alternating current electricity from its Marion power station over three cables to a substation to be built by the Lackawanna at Bergen Junction, Jersey City, and from its recently constructed West Orange switching station over two cables to a substation to be built near the Roseville avenue station in Newark. In these substations the Lackawanna will use mercury-arc rectifiers to convert the electricity to direct current for the supply to its overhead trolley system.

It is estimated by Lackawanna's engineers that the power requirements to be supplied by Public Service will be about 15,000 kilowatts of demand and that during the year 35,000,000 kilowatt hours of electrical energy will be used.

The present plans are for electrification of the Morris and Essex Division from Hoboken to Dover by way of Morristown, the Montclair Branch from Roseville avenue to Montclair, and the Passaic and Delaware Branch from Summit to Gladstone.

The contract also includes light and power for the railroad's stations and shops and for the large terminal warehouse now being constructed by the company at the Hoboken terminal.

New York

Transit Questions Postponed Until Fall

ALL matters pertaining to Interurban Rapid Transit Company's fare question both in subway and elevated lines, according to latest reports, are expected to be put aside until next Fall, when litigation probably will be in the state supreme court. It is stated that the program which the Commission has mapped out assumes that disputes over orders for longer station platforms, new cars, and an accounting for funds alleged to have been legally charged to operating expenses, as well as the fare questions, will be in actual litigation by October.

The Rapid Transit unification question, which has been held up because of the failure of the Board of Estimate to act upon the plan submitted by Samuel Untermyer more than a year ago, says the New York *Sun*, is scheduled to be taken up a few weeks before the municipal election.

Removal of Overhead Lines

CONSTRUCTION work which is expected to remove overhead lines from about 70 miles of streets by the end of this year, says the Brooklyn *Standard Union*, is now being carried on by the Brooklyn Edison Company. This work, explained Matthew S. Sloan, president of the company, is part of a prolonged program which will produce the most modern and efficient type of electric transmission and distribution system now known without overhead lines.

The work now under way, continues the *Union*, is engaging the services of 3,500 men and is carried on in day and night shifts to expedite it as much as possible. In addition there are six squadrons of workmen who are sent after midnight to any spot where traffic conditions necessitate extra speed in restoring streets to use. In an article appearing in the newspaper Mr. Sloan is quoted as saying in regard to the utility's plans:

"To take care of future growth and provide the best possible service, we are installing what is known as the network system of distribution. In this system the wires, which run through streets and cross streets, are connected at street intersections. Thus they form a grid or network into which power is delivered at various points from high voltage cables leading from the generating plants. The customer is supplied by a connection to this grid or network, and current may come to his premises from two or more directions. In this method of current distribution, substations will be eliminated, congestion of wires and cables under important streets will be greatly lessened, and this is of much importance today when the use of substreet areas for electric and telephone ducts, gas mains, subways, and other facilities is increasing about as rapidly as the use of streets for surface traffic."

Power Merger Investigation

GOVERNOR Franklin D. Roosevelt is interested in the large consolidations and mergers of electric utilities in the state. He has requested the attorney general to investigate a proposed $500,000,000 merger of virtually all up-state power corporations.

The proposed merger which has attracted the attention of the state would link the J. P. Morgan, Schoellkopf and Carlisle power interests. The Buffalo, Niagara and Eastern Corporation, the Northwestern Power Corporation and the Mohawk Hudson Power Corporation would be merged into the Niagara Hudson Power Corporation under the proposed plan.

The matter of vital importance to Governor Roosevelt, it is said, is the question whether these mergers would result in increased rates.

The inquiry by the attorney general's office will be based on the state anti-monopoly law and on certain provisions of the stock corporations law. The governor has requested the attorney general to determine whether the proposed merger seems to violate any of the provisions of these statutes.

Ohio

Gas Company Alleges Confiscation

A CONFLICT has been going on in Cincinnati between the Union Gas & Electric Company and the city. The city attempted to enforce lower rates and the company went into court to enjoin enforcement of these rates as confiscatory.

The rate ordinance, it is claimed, would save the consumers about $750,000 a year. It starts at a net rate of 65 cents a thousand cubic feet for the first 5,000 and there is a graduated scale to 50 cents a thousand for all gas over 25,000 cubic feet consumed.

The present rate starts at 75 cents a thousand cubic feet for the first 5,000 and grades down until the rate of 50 cents for all over 25,000 cubic feet used is reached.

Telephone Subscribers Go On Strike

BLOUNTSVILLE on June 14th was without telephone service owing to a strike of patrons. The Cambridge City Telephone Company, with offices at Winchester, abandoned its local exchange and arranged for service through the exchange at Losantville. This service, in the opinion of the subscribers, was so unsatisfactory that they refused to accept it.

Under the new plan, if a Blountsville citizen desired to talk to a neighbor, he was forced to call Losantville over a six-party line, and, after the connection, to take chances on getting in a word on another six-party line, according to the complaint of the subscribers.

New Gas Rate Commission Proposed

MEMBERS of the gas rate commission studying a proposed revision of natural gas rates for Toledo reached a deadlock last month with the Northwestern Ohio Natural Gas Company officials. A resolution providing for a new commission consisting of fifteen members was introduced in the council.

This new proposal contemplates a commission consisting of five members appointed by council, three appointed by the mayor, one selected by each of the three daily newspapers, two appointed from the ranks of the workers, and two appointed by the Chamber of Commerce.

The resolution provides that the rates suggested by such a commission would be submitted to the voters at the November election with neither the approval nor disapproval of the commission.

There is also a provision for the establishment of a position of gas inspector. This official would maintain the rate and gas service approved by the voters. This proposition also would be presented to the voters under the resolution.

Oklahoma

Phone Rules and Regulations

THE Oklahoma Corporation Commission on June 18th conducted a hearing on the proposed rules and regulations affecting telephone service in the state. A committee of the telephone division of the Oklahoma Utilities Association, officials of the Association, a number of attorneys, and others interested in the regulations appeared at the hearing.

The Commission concluded the hearing with respect to all rules with the exception of Rule No. 20, which makes a telephone utility responsible for the maintenance of all lines and equipment within the exchange initial rate area. The hearing on this rule was postponed until September 16th. At that time there will also be heard the application of the Ketchum hotel of Tulsa to be permitted to own its own PBX board and fix rates for trunk lines.

Oregon

War Between Busses

MOTOR bus riders are benefiting—for the present at least—by reason of a rate war between transportation companies in Oregon. Prices for rides by bus to Seattle from Portland were standardized at $2.50 on June 21st when the North Coast Transportation Company met the competition of its three smaller competitors.

Those familiar with the war situation, says the *Morning Oregonian,* which began about two years ago, are predicting that Portlanders will ride to Seattle for a dollar before hostilities end. Figured on the Seattle rate, the fare is 1¼ cents a mile for transportation, and although operators admit it is ridiculously low, no apparent termination of the conflict for business is in sight.

Formerly the ride to Seattle from Portland was $5.50 with round-trip tickets at $10. The schedule previous to the recent cut was $3.50 with the round trip at $6.50.

Even better service will be furnished at these new low prices, according to the reported statement of D. A. Schafer, district passenger agent for the North Coast Company. Thirteen new busses, costing $175,000, have been added to the company's fleet to take care of this business.

Electric Rate Not to Change

THERE is neither rate reduction nor increase in prospect for Portland users of electric power, according to a statement by E. W. Clarke III, of Philadelphia, reported in the Portland *Telegram.* Mr. Clarke is treasurer of the Portland Electric Power Company.

He said that his family and their clients had been interested in the Portland Electric Power Company since about 1906, and in all that time had never drawn a common stock dividend. The Clark family firm is E. W. Clark & Company of Philadelphia, financial house specializing in various public utility enterprises.

"I don't know of any prospects for a merger with the Northwestern Electric Company now," he said further. "We offered a rate reduction that would amount to about $400,000, I think fourteen months ago when we wanted to buy the Northwestern, but the people voted it down. It wouldn't seem feasible to attempt any such merger now in the face of that."

Washington

Phone Valuation Planned

A HEARING involving the valuation of the West Coast Telephone Company, which supplies telephone service to the city of Everett, will be conducted by the Department of Public Works at Everett on October 7th, according to an announcement appearing in the Seattle *Post-Intelligencer.* A proposed increase in telechronometer rates filed with the Department, and which are now under suspension, will also be considered at the hearing.

The Department has under consideration a case involving the discontinuance of the telephone measuring device, which has been in use in Everett for more than six years and has attracted much attention.

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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MISSOURI PUBLIC SERVICE COMMISSION.

RE LACLEDE GAS LIGHT COMPANY.

[Case No. 5217.]

Valuation — Reproduction cost — Forecast of price levels.

1. The Commission must make an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future, and where evidence points to a steady increase in the cost of cast iron pipe, the Commission should properly use a cost in its computations that will appear reasonable in view of market conditions, p. 562.

Return — Percentage allowed gas company.

2. A rate of return of from 7 to 8 per cent on the fair value of a gas utility was held to be not unreasonable, p. 563.

Depreciation — Amount allowed gas utility.

3. An annual allowance of 1½ per cent for depreciation was considered fair in fixing rates of a gas plant, p. 563.

Depreciation — Gas — Long-hour use.

4. The Commission held that its order making a maximum rate higher than an approximate charge per thousand cubic feet of gas to allow a spread in rates was just to the consumer using a large amount of gas by reason of long hours' use of demand, and such action was, therefore, not discriminatory, p. 565.

(CALFEE, Commissioner, dissents.)

[March 26, 1929.]

APPLICATION of a gas company for a rate adjustment; motion for rehearing overruled.

By the **Commission**: On January 15, 1929, the Commission entered an order (P.U.R.1929A, 561) herein fixing the fair present value of the gas department of the Laclede Gas Light Company at $47,000,000, fixing the annual depreciation allowance to be set up by the company at 1½ per cent of the depreciable property, fixing the fair rate of return at 7½ per cent, and fixing the maximum rate for gas at 95 cents per thousand cubic feet.

On the 24th day of January, 1929, the city of St. Louis and the company filed motions for rehearing in this cause, and on the 11th day of March, 1929, oral arguments on said motions

were heard before all members of the Commission at Jefferson City, Missouri.

The city of St. Louis has filed brief and supplemental brief in support of their argument. The company has considered it unnecessary to file a brief.

The Commission, in its determination of a fair value, rate of return, and allowance for depreciation requirement, gave in its opinion full consideration of all relevant facts.

It is also the opinion of the Commission that the facts, as developed in Case No. 1673, 16 Mo. P. S. C. R. 114, P.U.R. 1927B, 1, which was primarily a determination of the value of the company's property, and decided as late as November 20, 1926, after several years of investigation and numerous hearings, and which was accepted by both the city and company, should be given a very considerable amount of weight in the present proceeding.

Both the city and company have used the fair value as determined in Case No. 1673, *supra,* as a starting point in this proceeding. The Commission has deducted a considerable amount from said value for gas manufacturing equipment and appurtenances based on the use of same, the fact that some reserve is always necessary in case of a serious breakdown of their present source of supply, and the apparent obsolescence of a portion of same. The Commission is of the opinion that it deducted the proper amount, and that a further deduction in view of the evidence would be an interference with the managerial discretion of the company. In fact the company claims, in its argument, that the Commission is so interfering.

[1] The Commission's deduction for the reduction in cast iron pipe costs is criticised by the city.

Under the decision of the United States Supreme Court in McCardle v. Indianapolis Water Co. 272 U. S. 400, 71 L. ed. 154, P.U.R.1927A, 15, 47 Sup. Ct. Rep. 144, as cited in the Commission's report and order of January 15, 1929, herein, *supra,* the Commission must make an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future.

The evidence pointed to a steady increase in the cost of cast iron pipe, and the Commission used a cost in its computations that appeared reasonable in view of the market conditions and which, as a matter of fact, is practically identical with the quoted cost of pipe since January of this year.

[2] A rate of return of from 7 to 8 per cent was found reasonable in Case No. 1673, *supra,* and in view of the evidence herein and numerous recent court decisions, the Commission is of the opinion that a rate of return of 7½ per cent is not unreasonable at this time.

[3] An annual depreciation allowance of 1½ per cent is considered fair in view of the evidence herein. The company is a going concern furnishing a very essential service, and the evidence and argument show that a break in the principal mains might cause untold damage and death from explosions and asphyxiation. Regardless of how this reserve has been handled in the past, the evidence shows that at least 1½ per cent of the value of the depreciable property is necessary at present, and the Commission is of the opinion that a smaller allowance will cause a lower standard of maintenance with the consequent reduction in class of service which, in the end, is the important item sold the consumer.

The Commission has been presented with a mass of figures and argument by the city and company relative to the methods used and the results found by the Commission in its determination of the maximum rate that should be charged for gas.

After consideration of same, the Commission is of the opinion that its former report herein is not very clear or insufficient detail to allow one to follow it to the conclusion. The Commission believes that the rates as found are fair and that the same may be proved in the following manner without the necessity of reviewing all that was written in the former report herein:

I.

Calculation Based on Commission's Decision of January 15, 1929.

Property value as found	$47,000,000	
Return on value @ 7½ per cent		$3,525,000
Operating expenses as found		4,100,000
Depreciation—1½ per cent of $27,595,273		413,928
Total amount allowed to earn		$8,038,928
Gas sold year 1927—7,820,100 M. cubic feet.		
Customers charge allowed—75 cents for 300 cubic feet.		
Number of customers, 1927—198,646.		
Amount to be collected from customer charge		$1,787,814
Amount of gas used by customers using 300 cubic feet or less per month—		
Co. Ex. #4-A—11,256 customers use less than 300 cu. ft. per month, or	24,711 M cu. ft. per yr.	
Remainder, or 187,390 @ 300/Mo.	674,604 M cu. ft. per yr.	
Total	699,315 M cu. ft. per yr.	
7,820,100 — 699,315 = 7,120,785 M cu. ft. sold, exclusive of that on customer charge.		
Amount to be earned exclusive of that obtained on customer charge		$6,251,114
$6,251,114 divided by 7,120,785 M cu. ft. = 88 cents, average selling price of all gas exclusive of that sold on customer charge.		

II.

Calculations Based on Commission's Decision of January 15, 1929.

Value of trunk lines and mains as of December 31, 1926 (Co. Ex. #3, Sheet #3)		$14,189,615
Reduction in value of mains by Commission		560,000
Mains—allowed value		$13,629,615
Return and depreciation on above @ 9 per cent		$1,226,665
Number of customers, 1926 = 196,593.		
Allowance assigned to customers on basis of 20 cu. ft. demand = 8.37 cents.		
8.37¢ x 196,593 x 12 months		197,458
Total unassigned return		$1,029,207
Capitalizing $1,029,207 @ 9 per cent equals property unassigned, mains		$11,435,650
Unassigned property per decision		24,701,460
Total unassigned property		$36,137,110
Return and depreciation, unassigned property, 9 per cent		$3,252,340
Operating expenses allowed	$4,100,000	
Less amount considered for commercial expense	407,869	$3,692,131
Total revenue to be obtained over and above the 75 cents per month customer charge		$6,944,471
Total sales, 1927 = 7,820,100 M. cu. ft. gas.		
$6,944,471 divided by 7,820,100 = 88.8 cents, the average price per thousand cu. ft. to be charged for all gas consumed over and above 300 cu. ft. per month.		

P.U.R.1929C.

III.

Calculations Based Upon City's Supplemental Brief.

Value of trunk lines and mains, December 31, 1926		$14,189,615
Reduction in value of mains by Commission		560,000
		$13,629,615
Return per month on above @ 7½ per cent (page 4)	$85,185	
Depreciation per month 1½ per cent on $19,126,600 (page 4)	11,408	
Total return and depreciation per month	$96,593	
Total return and depreciation per annum		1,159,116
Allowance for return on basis of 20 cu. ft. demand (page 4): $85,185 x 20 cu. ft. per hour, minimum demand / 24,406,373 cu. ft. per hour, theoretical demand	= 6.98 cents per month per customer.	
Allowance for depreciation (page 5): $11,408 x 20 cu. ft. per hour / 24,406,973 cu. ft. (Co. Ex. 3, sheet 6)	= 0.94 cents per month per customer.	
Total return and depreciation	7.92 cents.	
Total customers 1926—196,593 (page 5).		
Total allowance per year 7.92 x 196,593 x 12 months		186,842
Return and depreciation unassigned		$1,345,958
Unassigned property per decision, $24,701,460.		
Return, 7½ per cent on $24,701,460 (page 5)		1,852,610
Depreciation 1½ per cent on $12,514,150 (page 5)		187,712
Operating expense, $4,100,000—$407,869		3,692,131
Total		$7,078,411
Based on the 1927 sale of gas of 7,820,100 M. cu. ft. the average amount per M. cu. ft. to be realized is 90.5 cents per M.		
If all other revenues derived are deducted		282,773
Total		$6,795,638
Or a cost of 87 cents per M. cu. ft.		
If other revenues are reduced to actual street lighting and penalties		104,773
Total		$6,900,411
Or an average cost of 88.2 cents per M. cu. ft.		

[4] It is readily seen from any and all of the above calculations that approximately 88 or 89 cents per thousand cubic feet of gas is a correct and fair average charge in addition to the 75 cents per month service charge. The Commission, in its previous decision, very naturally made the maximum rate higher than 88 or 89 cents to allow a spread in rates that are just to the consumer who uses a large amount of gas by reason of a long hours' use of the demand, and that would not be discriminatory.

It is noted in Calculation III that the city followed the method

used by the Commission in arriving at the rate a minimum user, or one having a demand of but 20 cubic feet of gas per hour, should pay. The Commission in its final conclusion found 90 cents as an average cost per thousand cubic feet of gas, without setting out the detail, but the city has found the amount that the minimum user should pay, and as shown, has omitted the sum of $1,345,958 which the company should be allowed to earn for return and depreciation on the unassigned portion of its trunk lines and mains. The above sum of $1,345,958 is comparable with the sum of $1,029,207 shown in Calculation II, and is the reason for the Commission being of the opinion that a more detailed explanation might be well at this time.

The Commission has carefully considered the reasons advanced by the company in its motion for rehearing and finds no merit in them.

In view of the above, and after careful consideration of all the evidence herein, the Commission is of the opinion that the motions for rehearing should be overruled, and the company be permitted to file its proposed schedule of rates for approval.

ARIZONA CORPORATION COMMISSION.

RE ARIZONA POWER COMPANY.

[Docket No. 3084-E-306, Decision No. 4702.]

Return — Joint gas and electric rates — Establishment of districts.

A power company was given authority to create a gas district and establish an independent electric range rate in territory served adjacent thereto notwithstanding the previous policy of the Commission requiring electric plants to absorb losses incurred by gas operation on condition that any direct loss incurred by the gas plant would be absorbed without resultant deficit in the earnings of a reasonable return on the gas plant as shown by the records of both operations.

[March 8, 1929.]

APPLICATION of a power company for authority to create a gas district and to establish independent electric range rate in territory served adjacent thereto; approved.

P.U.R.1929C.

By the **Commission:** Upon further consideration and supplementing Opinion and Order, Decision No. 4678. Many years ago the Commission permitted the establishment of gas districts in various parts of the state, within which districts the electric plant of the utility was permitted to absorb a portion of the loss incurred by the operation of the gas plant. This action by the Commission has become a precedent, and however much the Commission may approve the desire of the applicant herein to voluntarily reduce the electric rates to the power consumers within the Gas District of Prescott, it may not consistently, permit of this reduction if the subsequent operations of the utility would disclose a loss to the gas plant of so serious nature as to demand an adjustment of the rates in order to produce the reasonable return on the gas plant which is contemplated by the Constitution and the laws of the state, particularly where such adjustment must perforce be made at the expense of the electric consumers. It appears from the testimony given by the company that, considered alone, the rate is obviously reasonable, and would accrue to both the benefit of the consumers and the applicant. Therefore, the Commission is loath to withhold its approval. One solution presents itself, that is, if the Commission waives its rule as heretofore applied to the establishment of gas districts, and permits the rate to become effective, the direct loss incurred by the gas plant must be absorbed by the gas plant without the resultant deficit in the earning of a reasonable return upon the gas plant being directly or indirectly absorbed in the earning of a reasonable return by the joint electric plant. It will be necessary, therefore, for the applicant to so keep its records that the revenues and expenses of the electric plant within the established gas district are readily obtainable as distinguished from the revenues and expenses of the electric plant outside of the gas district. With this understanding the proposed rate is approved.

It is so ordered.

P.U.R.1929C.

PENNSYLVANIA SUPERIOR COURT.

CITY OF ERIE

v.

PUBLIC SERVICE COMMISSION et al.

(— Pa. Super. Ct. —.)

Appeal and review — Proper assignments of error.

1. Assignments of error should afford the court information as to the specific findings of the Commission which are deemed erroneous, p. 569.

Appeal and review — Federal and state taxes — Appeal.

2. The question of including state and Federal taxes in operating expenses will not be considered on appeal when the question was not raised before the Commission, and no specific finding was made in respect to them, p. 571.

Appeal and review — Basis of findings — Going value.

3. Going concern value will not be reviewed on appeal when the amount fixed by the Commission is less than that fixed by the protesting city's own witnesses, p. 571.

Depreciation — Interest on collected funds.

4. A contention that the company should be charged interest on funds collected as rates for depreciation but used for capital extensions is not well founded when depreciation is figured on the straight line basis, p. 571.

Valuation — Inclusion of nonuseful property — Erroneous complaint.

5. Complaint that nonuseful property is included in the rate base is of no moment when the evidence fails to show such fact but does show the exclusion of the property in question, p. 573.

Appeal and review — Cost of financing.

6. An allowance of costs of financing, although based upon meager testimony, will not be disturbed on appeal when any modification would not benefit the city appealing from the Commission's order, p. 574.

[March 1, 1929.]

APPEAL by a city from an order of the Public Service Commission adjusting telephone rates; order affirmed. For Commission decision, see P.U.R.1928B, 536.

Cunningham, J.: The city of Erie, appellant herein, was the complainant in a proceeding before the Public Service Commission in which an increase in the rates of the Mutual Telephone Company for its service in the city and county of Erie was attacked as "excessive, unfair, unjust, and unreasonable,"

and violative of our Public Service Company Law. The new schedule was filed March 2nd to become effective April 1, 1926, and the complaint was filed March 24th, thereby casting upon the utility the burden of showing the reasonableness of the increase in its rates. A number of hearings were conducted by the Commission between June 3, 1926, and May 8, 1927. On January 4, 1928, P.U.R.1928B, 536, the Commission filed its report and order dismissing the complaint, from which order we have this appeal by the city of Erie.

The company contended before the Commission that the fair value of its property for rate-making purposes, as it existed on August 31, 1926, and based upon its reproduction cost less accrued depreciation, was at least $5,023,494. Appellant contended that its fair value upon that basis was only $4,251,828. The company, however, insisted that the reproduction cost of its property, without any deduction for depreciation, namely, $5,714,060, should be considered as a proper rate base—a contention which the Commission properly rejected. The Commission found that the fair value of the company's property as of August 31, 1926, was $4,825,000. Upon this amount it allowed a 7 per cent rate of return, or $337,750 per annum; made an allowance of $548,762 for annual operating expenses, and an allowance of $150,000 for annual depreciation, or a total of $1,036,512 as the annual revenue of the company might reasonably be permitted to collect from the users of its service.

[1] During the progress of the proceeding before the Commission it was estimated that the rates in the new schedule would produce approximately $1,018,463 annually; to this the Commission found should be added $980 of non-operating revenue (rents); and the Commission, therefore, estimated the total annual revenue which the new schedule might reasonably be expected to produce at $1,019,443. It subsequently developed, as a result of the actual experience of the company under the new rates for the first year—April 1, 1926, to March 31, 1927,—that they produced $1,029,843 as operating income. If the same amount of non-operating income be added, and no deductions made for uncollectible items, the total revenue under the new rates for the first year they were in operation would be

$1,030,823, or $5,689 less than the allowable revenue fixed by the Commission. Appellant contends that this result is due to the fact that the Commission not only fixed the rate base at an unreasonably high figure but also made an excessive allowance for annual operating expenses, including taxes. No question of confiscation is involved in this case; the complaint is in behalf of ratepayers, and it, therefore, becomes our duty upon this appeal to inquire only whether the Commission has "arbitrarily fixed the rates contrary to evidence, or without evidence to support it, or in a grossly unreasonable manner." Lewistown v. Public Service Commission, 80 Pa. Super. Ct. 528, 533, and cases there cited. The form of the assignments of error as printed in appellant's brief should not be permitted to pass without comment. The first and second relate to the final order and are not objectionable, but the third, fourth, and fifth are drafted in terms so general that they fail to afford us any indication of the specific findings of the Commission which appellant deems erroneous. For instance, by the third it is averred that the Commission "erred in its finding that the fair value of the properties of the Mutual Telephone Company was $4,825,000," and then follows merely a quotation of the general finding. No attempt is made to specify the items which appellant contends were improperly included in the rate base.

By the fourth assignment it is charged that the Commission erred in making an allowance of $548,762 for operating expenses, but there is no specification of any item or items which should not have been allowed or which should have been included at a lower figure than that fixed by the Commission. The fifth is open to the same objection. The petition on this appeal, in which the appellant should have set forth "specifically and concisely the error or errors assigned to the finding, determination, or order of the Commission," has been improperly omitted from the printed record. We have, however, examined the original petition as returned with the record and find that it contains fifteen assignments of alleged errors, many of which are in general terms. From a consideration of the assignments, petition, and appellant's statement of the questions involved,

we gather that its material complaints are that the Commission erred in these five particulars:

1. Including in the rate base an item of $99,546 for property —the Ninth Street Exchange—which is no longer used or useful

2. Including in its finding of fair value the sum of $245,000, as cost of financing

3. Finding the sum of $190,000 to be reasonable and necessary for working capital

4. Including in its finding of fair value the sum of $657,444 as representing the additions made to plant facilities between October 1, 1925, and August 31, 1926, which item appellant contends should not have exceeded $405,496

5. Allowing $548,762 for annual operating expenses, including Federal and other taxes, and exclusive of the allowance for annual depreciation.

[2–4] Several other matters are discussed in appellant's brief, among them being the propriety of including in the allowance for operating expenses all Federal and state taxes and at the same time allowing a 7 per cent return. The Commission has not made any specific findings with respect to the matter of taxes, and it does not appear that the question which appellant now seeks to argue was raised before the Commission. Even if we assume that the Federal income tax and the state tax on corporate loans were both included in the allowance for operating expenses, the record does not contain the data necessary for a disposition of the questions appellant now endeavors to raise. Moreover, the learned counsel for appellant state in their brief in connection with their discussion of operating expenses, that "the appellant (does) not contend that this sum ($548,762) included any improper expenditures, but (does) contend that expenditures in large amounts were made for purposes which would not occur again, at least for many years." Under all the circumstances we must decline to consider the question of taxes upon this appeal. Nor are we concerned in this case with the matter of going concern value as the amount fixed by the Commission for this item is $40,000 less than the amount suggested as proper by appellant's witness. Another somewhat subsidiary

contention of appellant is that the company should be charged with interest at 5 per cent "on funds collected through rates for purposes of depreciation and used for capital extensions upon which a rate of return is permitted." It is not suggested that the amount of the accumulations in the depreciation reserve should be considered in connection with the rate base as in the case of York v. Public Service Commission, 85 Pa. Super. Ct. 139, nor that all of the reserve should be charged with interest, but, in the language of appellant's counsel, "only that portion which has been collected through rates for the purpose of meeting depreciation charges and has been invested in additional plant." As the record indicates that it is the practice of the company to figure its depreciation on the straight line, as distinguished from the sinking fund, basis, we are not persuaded that this contention of appellant is well founded.

A brief reference to the history of the company is necessary to the disposition of the five above stated substantial questions involved upon this appeal. The Mutual Telephone Company was organized in 1898 to furnish telephone service in the city of Erie and vicinity. The Bell Telephone Company of Pennsylvania was engaged in a similar service in the same territory and a competitive situation existed. By March, 1926, the Mutual Company, which began operations with 300 telephones, had approximately 18,839 telephone stations in operation in the city of Erie and the Bell Company something over 3,000 stations. The Mutual Company owned a telephone exchange building on Ninth street, referred to in paragraph one of our statement of questions. On April 1, 1926, an arrangement became effective by which the Mutual Company absorbed the Bell Company in this territory and the latter ceased its operations therein. As a result of this purchase the Mutual Company acquired some 3,155 additional stations and, as stated in appellant's brief, "moved its exchange, including switchboards, cables, accounting system, and administration offices into its new building (on East Tenth street), abandoning the old exchange and office building . . . (and) issued sufficient bonds to finance the construction of the new building and purchase of the Bell properties." At the expiration of one year following the consolida-

tion, the Mutual Company had 20,514 telephones in the city of Erie and 4,127 in Corry, Girard, and other places in Erie county.

[5] 1. The removal from the old to the new exchange building and the alleged abandonment of the former gave rise to the controversy over the inclusion by the company of both buildings in its estimates. It included the old exchange building in its valuation at a reproduction cost less depreciation of $99,546. Appellant, contending that this building was no longer used or useful omitted it entirely from its appraisement. In disposing of this contention, the Commission said: "The Commission agrees with complainant that this item of property is not substantially used or presently useful. Making this deduction from the direct construction costs, it appears that the parties differ by less than $9,000, which amount is distributed over numerous small items and may be considered negligible." (At p. 538 of P.U.R.1928B). It is now contended by appellant that, although the Commission says it excluded this item in arriving at the rate base, it did not in fact do so. We are, therefore, required to examine the evidence and exhibits of the parties bearing upon their respective contentions as to what physical property was actually included by the Commission. The foundation for the estimates of both parties is an inventory of the company's property as of October 1, 1925, and the parties are in accord that an amount equal to 16.77 per cent of the direct construction costs fairly indicates the amount to be added for indirect construction costs or overheads, and also agree that the accrued depreciation may properly be measured by a percentage of 14.4 An examination of the testimony and the respective exhibits of the parties satisfies us that they do not differ materially in their estimates of the direct undepreciated cost of the physical property. From one of the consolidated exhibits of the company it appears that its estimate of the direct construction cost of the Erie city property is $2,763,487, and of the property outside of the city $746,570, or a total of $3,510,057. By appellant's exhibit it is shown that its estimate of this cost is $3,501,288. The difference of $8,769 is probably due to the omission from the inventory upon which appellant's figures are based of a

quantity of iron wire. For the purpose of testing appellant's claim that the old exchange building is included in the Commission's finding of $4,825,000 as the rate base, we may start with the direct construction costs of the physical property at the above figure of $3,510,057. Deducting from this amount the agreed upon cost of the building in question, $99,546, there remains a direct construction cost of $3,410,511 for used and useful property. To this is to be added indirect construction costs at 16.77 per cent, or $571,942, making the total cost of used and useful property $3,982,453. When 14.4 per cent, the agreed percentage for accrued depreciation, or $573,473, is deducted, there remains as the depreciated cost of the used and useful property the sum of $3,408,980. The company contends, and the Commission found, that items should be added to this amount for going concern value, cost of financing, working capital, additions to property since the date of the inventory, and for miscellaneous investments in order to ascertain a proper rate base; appellant contends that nothing should be added for cost of financing or miscellaneous investments, and differs with the company and the Commission with respect to the amounts for going concern value, working capital, and additions to the property. The Commission fixed going concern value at $300,000, cost of financing $245,000, working capital $190,000, additions to property $657,444, and miscellaneous investments $15,131. When the aggregate of these amounts is added to the above figure of $3,408,980, as representing the practically agreed upon depreciated cost of used and useful property, the total is $4,816,555. This total is so close to the Commission's finding of $4,825,000, that it seems to us to demonstrate conclusively (even if the adjustment in the inventory be disregarded) that the Commission did not include in its finding the cost of the Ninth street exchange building.

[6] 2. The Commission included $245,000 in the rate base as representing "cost of financing," the evidence from which any conclusion may be drawn concerning this item is very meager. About all we have is the fact that on December 31, 1926, the bond issue was $1,632,527 and the fact that the company carried on its books an annual item of $3,125 for amortiza-

tion of "debt discount and expense." The company, through its engineer and by its exhibits, claimed that 7½ per cent of the undepreciated reproduction cost, plus miscellaneous investments, or $339,531, should be allowed. Its main justification for this contention seems to be the fact that, in determining the fair value of the properties of the Philadelphia Rapid Transit Company and Ohio Valley Water Company some years ago, the Commission used this percentage. Appellant, through its engineer, urged that nothing should be included here for this alleged element of value because the company in the past had followed the usual commercial practice of amortizing its bond discount over the life of the bonds. We are not impressed with this argument, particularly as it has been held that the cost of marketing bonds should be allowed as a capital charge. Ben Avon v. Ohio Valley Water Co. 68 Pa. Super. Ct. 561, 592, P.U.R. 1918A, 161, affirmed in 271 Pa. 346, 357, P.U.R.1921E, 471, 114 Atl. 369. No testimony was presented in this case indicating the original cost of the property; both parties adopted the reproduction cost theory. When evidence of original cost is introduced as a factor in determining present fair value it is obviously quite proper to consider the actual experience of the company in the matter of the cost of obtaining money, and in such cases it has been consistently held that mere theoretical or hypothetical costs of this nature are not to be included. Cost of financing is however an element of value to be considered in a reproduction cost estimate. It is a definite item of cost and, by the introduction of the testimony of witnesses familiar with the cost of issuing and marketing securities, it should be possible to determine it with substantial accuracy; it may differ materially in different properties and under different plans of financing. The ratio of stocks and bonds to the total capitalization, affecting as it does the margin of safety, necessarily has a material bearing upon the cost of securing money. But no attempt was made in this case to show what it probably would cost to procure sufficient capital to reproduce the company's present property under the different financial plans which might reasonably be adopted. The Commission states in its report that appellant does not include in its estimate a specific amount for this item,

"but does mention 5 per cent." Counsel for appellant deny in their brief that any percentage was suggested and we have been unable to find any justification in the record for this statement by the Commission. We are, therefore, at a loss to understand upon what basis the Commission fixed its allowance of $245,000. We are of opinion that an item of this character should be included in ascertaining the rate base in this proceeding, but the only evidence we have been able to find indicative of the amount at which it should be allowed is that in behalf of the company suggesting $339,531. As already indicated, that evidence is unsatisfactory, but is sufficient to show that the element of fair value we are now considering is present. We are convinced that any result which might be obtained by returning this record for additional testimony and specific findings on this item would not materially affect the finding as to fair value, and have, therefore, concluded that to return the record would only prolong the litigation without any benefit to appellant.

3. The next inquiry is whether there is evidence to justify the finding that $190,000 is a reasonable allowance for working capital to care adequately for the operating conditions of the future. In appellant's exhibit this item is fixed at $106,116. Its engineer based his figures upon "the average of the operating and purchasing accounts for a period of three years, including 1926," which was $77,366, and added thereto his estimate of operating expenses for one month. On the other hand, the company's engineer, referring to the city exchange alone, submitted a figure of $150,000 with this explanation: "The allowance I have made for working capital was considered from the viewpoint of the necessary stores and supplies and materials, reasonably necessary in the conduct of the business, plus a small allowance of cash on hand to maintain reasonable credit at the banks. The company, prior to the absorption of the Bell properties and for the two years immediately prior, had approximately $100,000 of stores and supplies on hand at all times, and I believe and consider it equitable that after the merger a little larger amount would be necessary, owing to the fact that the properties were very nearly doubled, so I allowed $125,000 as a reasonable amount for the stores and supplies to be kept on hand, and the

nominal sum of $25,000 in cash for credit standing at the banks, making a total of $150,000 for working capital." Testifying later and with reference to the entire property, this witness suggested $190,000, "based on $150,000, the estimate given at a previous hearing when I testified as to the Erie exchange only, and calculating corresponding ratio to the outside properties as the total physical properties bear to the physical property of the Erie exchange, thus reaching a working capital in the amount of $190,000." By reason of the consolidation, the requirements of the company in the past do not furnish a very substantial basis for an estimate of what it will need in the future. The evidence indicates that its physical property has been largely increased; from July 1, 1924, to April 1, 1926, there was an increase of nearly 5,000 telephones in the city exchange. The balance sheet of the company, as contained in one of appellant's exhibits, shows the item of "materials and supplies" as of December 31, 1926, to have been $155,167. We think there was satisfactory evidence to support the conclusions of the Commission upon this item.

4. The company claimed, and the Commission held, that $657,444 should be included in the rate base for additions made to its plant between October 1, 1925, the date of the inventory, and August 31, 1926, the date adopted by the Commission for determining the capital structure. That such expenditures were actually made was not disputed, but appellant's witnesses contended that the amount of this item should be ascertained by adding to the total amount of the additions between October 1st and December 31, 1925, viz., $34,385, one-half of the additions made during the calendar year 1926. The expenditures for additional facilities during 1926 aggregated $742,221; appellant's engineer took one-half of this amount, $371,110, and, adding the above figure of $34,385, suggested $405,495 as the proper allowance for this item. He states that he took one-half of the additions during 1926 to give him "the amount which fairly reflects the value of the property from the beginning of the year to the close of the year," and that "much of this structure was in use only a short period and the average would be one-half year." The difficulty with appellant's theory is two-fold. In

the first place, the Commission's problem was not to approve rates which would be reasonable for the year 1926 alone, but such rates as will probably give a reasonable return on the value of the property as determined at the time of the investigation, and for at least three years in the future. Secondly, the evidence shows that a large part of the additional expenditures were for the new Tenth street exchange building which was occupied April 1, 1926, and for its equipment. These expenditures were $531,664, and, along with the additions made between October 1st and December 31, 1925, represent $566,049 of the total of $657,444 approved by the Commission. An additional $100,000 does not seem unreasonable for the period from April 1st to August 31, 1926. In our opinion, the evidence fully sustains the action of the Commission in this connection.

5. The ascertainment of a proper allowance for annual operating expenses in this case is complicated and rendered unusually difficult by reason of the consolidation of the two systems on April 1, 1926. The Commission allowed $548,762. The actual operating expenses, as shown by one of appellant's exhibits for 1926, were $668,152, including annual depreciation. This figure covers only nine months' operation of the combined properties. An analysis of the evidence and exhibits indicates that the operating expenses of the entire property for the eleven months from April 1, 1926, to March 1, 1927, exclusive of depreciation, were about $532,388. By adding what seems to us to be a reasonable estimate for the additional month, the total for the first year's operation of the combined facilities will approximate $593,000. The basis of the main attack upon the company's claim for operating expenses is that these costs for 1926 necessarily include items incident to the purchase and cutting in of the Bell system, and the making of numerous adjustments which will not be incurred in future years. There is force in this suggestion, but it is of little practical use to us in the absence of a specification by appellant of the particular items which, in its opinion, have been included without sufficient evidence that they will probably be incurred from year to year. Nor does it assist materially to point to the fact that the operat-

ing expenses, exclusive of depreciation, of the Mutual Company alone were only $281,984 in 1925, $208,187 for 1924, and $195,820 for 1923, or to show the average cost per station in those years under the operating conditions then existing. In connection with this subject the Commission said: "It may be that the operating costs for 1925 and 1926 contain certain elements incident to the consolidation which will not annually reoccur, but the amount of such expenditures, if they exist, was not convincingly established. Moreover, it is not clear that the improved character of service will not entail other expenditures of at least equal amounts." (At p. 540 of P.U.R.1928B.) Of course, the burden was on the company to show by competent evidence that its claim was reasonable, but, upon this appeal, we are entitled to have a specification of the items which appellant contends should have been excluded by the Commission and of those which should have been included at lower figures. We have not been referred to any complete estimate by appellant's witnesses or counsel of what they contend would be a proper allowance. In Wayne Public Safety Asso. v. Public Service Commission, 94 Pa. Super. Ct. 228, we had occasion to consider the quantity and quality of evidence necessary to sustain an allowance by the Commission for operating expenses and, citing Schuylkill R. Co. v. Public Service Commission, 71 Pa. Super. Ct. 204, said, at page 235: "There is no statutory designation either of the kind or quality of the evidence required to induce a decision by the Public Service Commission, and it would be impractical to specifically define the quantity necessary to produce that result. It must be sufficient, however, to satisfy a reasonable mind that the fact is as alleged. The law vests in that body the authority to exercise its judgment, and it is that, rather than the opinion of this court, which is to control the subject, if the order be within the power of the Commission, and it is not unreasonable." Upon a consideration of the evidence and exhibits relating to this branch of the case, we cannot say that the allowance made by the Commission is without evidence to support it or contrary to any persuasive evidence on the record. If experience should demonstrate that it is too high, appellant will not be without remedy.

For the reasons stated, we are of opinion that the order of the Commission challenged upon this appeal is reasonable and in conformity with law and, therefore, dismiss all the assignments.

Order affirmed.

NEW YORK DEPARTMENT OF PUBLIC SERVICE.
STATE DIVISION, PUBLIC SERVICE COMMISSION.

RE LOW POWER & LIGHT CORPORATION.

[Case Nos. 4547, 4548.]

RE VILLAGE OF TUPPER LAKE.

[Case No. 4549.]

Municipal plants — Contractual obligations — Electricity.

1. The Commission refused to allow a municipality to construct and operate a generating plant where it would be unable to use the power so developed because of an outstanding contractual obligation to take energy from a private company, p. 583.

Electricity — Development as a whole — Municipal plants.

2. The Commission refused to authorize the construction or operation of transmission lines in small communities which were part of a general plan of hydroelectric development where the central part of the project had been disapproved by the supreme court of the state, p. 583.

[February 14, 1929.]

PETITION of a municipality to construct and operate an electric system in certain territory; denied.

Appearances: Taylor, Blanc, Capron & Marsh, New York city, by C. Alexander Capron; William T. Field, Watertown, and Neil F. Towner, Albany, of counsel, for Low Power & Light Corporation; Ralph Hastings, Tupper Lake, and Frank Bell, Glens Falls, of counsel, for Village of Tupper Lake; John M. Cantwell, Malone, Frank Irvine, Ithaca, and J. A. Kellogg, Glens Falls, of counsel for Paul Smith's Electric Light & Power & Railroad Company; Albert Ottinger, Attorney-General, by C. S. Ferris, Deputy Attorney-General, for New York State Conservation Commission; Paul E. Martin, Mayor, Village of Tupper Lake.

Lunn, Commissioner: These three proceedings should be considered together. In cases No. 4547 and No. 4548, the Low Power & Light Corporation seeks to secure the permission of this Commission to develop certain water power sites on the Bogg river and to supply the municipal plant of the village of Tupper Lake with a new source of electrical energy. Case No. 4547 is for the construction of a generating plant and transmission lines. Case No. 4548 covers the leasing of this plant to the village.

Case No. 4549 is a petition by the village of Tupper Lake for permission to operate such leased plant.

Tupper Lake established in 1900 to 1903 a municipal lighting plant. They developed their own current, but in 1917 and 1918 an agreement was entered into with the Oval Wood Dish Company providing for the securing of current from that company. Under this agreement the village paid 3 cents per kilowatt hour except during the periods when the mill was closed, when the village supplied the necessary boiler fuel which increased the cost of the current at such time to between 9 and 10 cents per kilowatt hour. During December, 1923, the Oval Wood Dish Company served notice on the village that after July 1, 1924, it would no longer supply the village with electricity. The plant originally used by the village to generate current had by this time fallen into disuse so that it was necessary to secure a new source of power.

The village authorities consulted with several different companies operating in that vicinity and finally presented their problem to the Paul Smith's Electric Light & Power & Railroad Company. After negotiations a contract was finally made under which the Paul Smith's company agreed to construct a transmission line from their plant at Paul Smith's to Tupper Lake, passing through Lake Clear and Saranac Inn.

Under the terms of the contract the village was to pay 3 cents per kilowatt hour for power delivered. The transmission line was completed on January 17, 1925, when power was delivered to the village. The contract was for a term of five years and contained a provision whereby the village had the right to renew

such contract for a further period of five years. Since January 17, 1925, current has been delivered to the village.

On November 7, 1927, the board of trustees of the village adopted a resolution exercising the option of extending the contract for five years, and notice of such election was served on the Paul Smith's Company.

The Farmers Loan & Trust Company owns, as trustee, certain property in the towns of Piercefield and Colton, St. Lawrence county, containing two power sites located on the Bogg river. The upper site is in the town of Colton and the lower site in the town of Piercefield. It is proposed to transfer this property to the Low Power & Light Corporation. The plan calls for the erection at the lower dam of a power house and the construction of modern hydro-electric plants at both power sites. A transmission line will be built connecting the two sites and extending over a private right of way to Horseshoe station in the town of Piercefield. The line will then run 7 miles to the hamlet of Conifer; from Conifer the line will follow the highways to the hamlet of Piercefield, and from that point to the town line of Altamont. A second transmission line will also be constructed from Conifer to the hamlet of Cranberry Lake, a distance of about 13 or 14 miles, where connection will be made with the transmission lines of the Northern New York Utilities, Inc.

The village of Tupper Lake will construct a transmission line from its present plant to the town line where it will connect with the Low company's line.

The town of Piercefield has granted a franchise to the Low Power & Light Corporation for the necessary right to construct their transmission line. No franchises are necessary in the towns of Clifton and Colton since the line will be on private right of ways.

Upon the completion of the generating plant and transmission lines the property will be turned over to the Village of Tupper Lake for operation under an agreement whereby the village agrees to pay 1½ cents per kilowatt hour for the current it uses. In addition, the village is to pay the Northern New York Utilities, Inc., $2,000 a year in consideration of that company's agreement to furnish standby service. The Low company retains the

right to take surplus power for the purpose of supplying the inhabitants of the town of Piercefield with electrical current.

At the hearings before this Commission the attorneys for the village of Tupper Lake and the Low company contended that the contract and the renewal thereof between the village and the Paul Smith's company did not bind the village to purchase all its power from the Paul Smith's company. The attorneys for the Paul Smith's company, however, argued that the contract was binding upon the village and required it to purchase all of its electricity from their company.

To determine this question a proceeding was brought in the supreme court of Franklin county by the village of Tupper Lake against Paul Smith's Electric Light & Power & Railroad Company. This case was argued before Justice Crapser, and on January 26, 1929, a decision was made wherein the court held:

"I therefore conclude and decide that there should be a declaratory judgment in this case declaring:

"1. That the contract of January 18, 1924, was a binding contract between the parties obligating the plaintiff to take all of its electricity from the defendant during the term of said contract.

"2. That the notice given by the village on November 7, 1927, to the defendant of the village's desire to renew the contract was a valid renewal and its acknowledgment and acceptance by the Paul Smith Company, on November 12, 1927, constituted a valid renewal of the existing contract and obligated the plaintiff to take all of its electricity from the defendant from July 1, 1929, to July 1, 1934, and obligated the Paul Smith Company to furnish all of the electricity required by the village during that period of time at 3 cents a kilowatt hour.

"Let judgment and findings be submitted accordingly without costs to either party against the other."

[1, 2] The decision made by Justice Crapser determines several of the questions presented to the Commission in these three cases. As the village is bound to purchase, until 1934, all of its current from the Paul Smith's company, the effect of this Commission approving the lease made between the village

of Tupper Lake and the Low company would be that the village, while being bound to purchase its power from the Paul Smith's company, would also be under obligation of operating a generating plant while being unable to use the power so developed.

If the lease between the village aand the Low company is not approved, no purpose would be served in authorizing the village to operate an electric plant in the towns of Colton, Piercefield, and Altamont. This being the situation the only case remaining for determination is No. 4547, the petition of the Low Power & Light Corporation to construct an electric plant in the towns of Colton and Piercefield, and for approval of the exercise of a franchise granted by the town of Piercefield.

The evidence received at the hearing respecting the proposed hydro-electrical development and the construction of transmission lines was based on the theory that electricity would be supplied the village of Tupper Lake. Although some evidence was received respecting the desirability of supplying the inhabitants of the town of Piercefield with electric current, such service was but a very minor incident to the general plan. It does not appear that the extensive development of the power sites on the Bogg river would be required or would be proper if the only outlet for the developed power was the limited demand of private consumers in Piercefield.

As previously stated, the entire plan of generation, distribution, and transmission was presented as a single enterprise, the principal purpose of which was to furnish the village of Tupper Lake with a new source of electrical energy. The possibility of the village availing itself of this new source of energy has been removed by a decision made by the supreme court of this state.

The whole project, therefore, must fall with this decision, and under these circumstances it is my recommendation that the petitions in all three cases be denied.

Proposed orders to that effect are hereto attached.

[Orders omitted.]

All concur.

P.U.R.1929C.

MINNESOTA RAILROAD AND WAREHOUSE COMMISSION.

RE MINNEAPOLIS STREET RAILWAY COMPANY.

[A-4265.]

Depreciation — Average annual cost of retirement — Street railways.

1. A contention that the depreciation charges of a street railway should be reduced to the average annual cost of retirements charged against the reserve account was held to be without justification where the average annual rate in such event would be reduced from 2.5 to 1.112 per cent, p. 594.

Depreciation — Relation to depreciation reserve balance — Street railways.

2. The Commission rejected the theory that accrued depreciation on street railway property should be increased by the amount of the increase in depreciation reserve as of a certain date, p. 600.

Valuation — Consideration of depreciation reserves.

3. Depreciation reserve funds or increases thereof should not be taken into consideration at all in ascertaining the fair value of utility property, in view of the lack of relationship between the two, p. 601.

Return — Operating expenses — Operations to be discontinued.

4. The Commission refused to deduct the cost of operating a certain bus line from the expenses of a street railway company because of an alleged likelihood of the discontinuance of such service, where the records contained no definite information regarding such discontinuance, p. 607.

Return — Percentage allowed — Street railways.

5. The Commission found that a reasonable return on the fair value of the property of a street railway company should be not less than 7½ per cent, p. 609.

(JACOBSON, C., dissents.)

[January 25, 1929.]

APPLICATION of a street railway company for the adjustment of fares; rates adjusted in accordance with opinion.

By the **Commission**: On November 15, 1928, the Minneapolis Street Railway Company filed its petition with the Railroad and Warehouse Commission petitioning the Commission to fix and establish the rates of fare to be charged for carrying passengers within the city of Minneapolis which will yield a reasonable rate of return on the fair value of the street railway company property within the city of Minneapolis, as an operating system.

The matter was duly brought on for hearing before the full Commission at its office, pursuant to notice duly given, on the 17th day of December, 1928. Messrs. Junell, Dorsey, Oakley, and Driscoll of Minneapolis, and Oscar Mitchell of Duluth, appeared for the Minneapolis Street Railway Company; Mr. Neil M. Cronin, City Attorney, appeared for the city of Minneapolis.

After a partial hearing, an adjournment was had until the 21st day of December, 1928, and thereafter counsel for the respective parties submitted briefs to the Commission.

Subsequent to the hearing on December 21, 1928, the Commission requested its engineers and statisticians to make a personal investigation and study of the proofs and exhibits offered by the respective parties. The Railroad and Warehouse Commission's statistician filed a written report which was received in evidence, a copy of which report was mailed to the attorneys for the street railway company and the city attorney of Minneapolis, and a further hearing was set for January 21, 1929, at the office of the Railroad and Warehouse Commission for the purpose of permitting the respective attorneys to cross-examine the Commission's statistician. The hearing was held, pursuant to notice duly given, on January 21, 1929, at 2:00 o'clock P. M., Messrs. Junell, Dorsey, Oakley, and Driscoll appearing for the Minneapolis Street Railway Company, and Mr. Neil M. Cronin appearing for the city of Minneapolis.

At the conclusion of the cross-examination, the application was submitted upon the proof and briefs of the respective parties and on all the files, records, and proceedings had in the above entitled matter.

Now, having heard counsel, and the Commission being advised and having considered all matters here involved, the Commission finds:

The Fair Value.

This Commission by its order of January 3, 1925, first determined the fair value of the petitioner's property within the city of Minneapolis as an operating system to be as follows:

January 1, 1925.....$26,787,228.11

The finding of the fair value of the property of the petitioner

of $26,787,228.11 as of January 1, 1925, was reaffirmed by this Commission's order of December 22, 1925, 39 Ann. Rep. Minn. R. & W. C. 450. The proofs offered upon the hearing, and the report of the Railroad and Warehouse Commission's statistician, shows conclusively that the net additions to the property of the petitioner are as follows:

For the year 1925	$74,060.52
For the year 1926	249,737.37
For the year 1927	381,703.70
Estimated for 1928	244,800.00
Total	$950,301.59

This amount added to $26,787,228.11, the fair valuation as of January 1, 1925, makes a total of $27,737,529.70 as the fair value of the petitioner's property as of January 1, 1929, less depreciation, if any.

In the Commission's order of July 3, 1925, 39 Ann. Rep. Minn. R. & W. C. 384, the Commission found that the percentage condition of the property of the company was 87 per cent. Mr. A. L. Drum, the petitioner's engineer, testified before this Commission as to the percentage condition of the property of the company at the former hearings. He also testified at the present hearing, as follows:

Q. Will you very briefly describe the nature and character and extent of that investigation?

A. It is the customary method of inspecting the street railway property for the purpose of ascertaining the existing depreciation due to wear and use, and individual engineers who are experienced men in their different departments such as overhead lines, track and roadway, buildings, sub-station equipment, car station equipment, rolling stock, etc., to go over the items of property and ascertain what is the amount of the existing depreciation in such property, and after that with the field notes and information ascertained by these engineers, I go over the property personally and reach conclusions as to the per cent condition of the property based on the existing depreciation found in each integral part of the property.

Q. In other words, you would take the work of your associates

and verify that finding by yourself inspecting and examining the representative items of property?

A. Yes.

Q. Now, did that investigation cover a long period of time, and was it very extensive and thorough prior to the 1925 findings of this Commission?

A. Yes.

Q. Now, Mr. Drum, have your representatives made a recent examination of this Minneapolis Street Railway property?

A. They have.

Q. And have you yourself examined their reports and findings?

A. I have.

Q. And have you also yourself verified the reports and findings of your men by a personal inspection of the property?

A. I have.

Q. And of the representative items of the property?

A. I have.

Q. From the examination of your men, and the reports made by them, and the examination that you have yourself personally made, are you able to determine the condition of the property with reference to depreciation?

A. Yes.

Q. Will you please state to the Commission the results of your examination and your findings as to the condition of this property?

A. The engineers made a detailed inspection of the physical property, inspecting all of the principal parts of it, and from such inspection determine the actual existing depreciation of the property. Now, taking into consideration the depreciation due to wear and the amount of use, and the time in use, and the character of use of the property, with the field notes and inspection data of the engineers, I went over and inspected the property personally. I find that the present condition of the property is substantially the same as I found by the inspection of the property in 1922. The existing depreciation, or rather the per cent condition of the depreciable property as I found it in 1922 was 87.9 per cent.

Q. And you say you find it in substantially the same condition at this time?

A. I do.

Q. Now, you testified at the former hearing that the condition per cent was 87.9?

A. Yes.

Q. What is your opinion as to the present condition of this property now?

A. My opinion is that the per cent condition of this property today is better than 87 per cent.

Q. And that is based upon actual observations, examination, and investigation?

A. Yes.

Q. And that is the actual condition of the property as you find it?

A. It is. (See Record pp. 3 to 6)

Petitioner's Exhibit 6 is a submission of the records known as the price trends with respect to construction work, showing a slight increase in the cost of construction between 1925 and 1928. See Petitioner's Exhibit No. 6, which was received in evidence without objection. Mr. Drum was also excused without cross-examination.

The city's expert, Mr. Cooper, prepared Exhibit 1 by examining the operating statements of the Minneapolis Street Railway Company submitted to the Commission in connection with the application of the company to have fixed and established increased rates of fare to be charged the city of Minneapolis, and by examining the exhibits filed by the company and the records and data in the office of the company relating thereto, and in connection therewith, he says:

Table II sets forth my judgment with respect to a rate base as of January 1, 1929. I have adopted as my starting point the finding by the Railroad and Warehouse Commission that the fair value of the street railway property of the Minneapolis Street Railway Company as of January 1, 1925, was $26,787,228.11. While there may be some difference of opinion as to this figure, it is my judgment that nothing is to be gained at this time by opening the question of valuation.

"I have brought the Commission's fair value down to January 1, 1929, by the following process: I have added each year the net additions report by the company and have deducted therefrom the increase in the reserve for accrued depreciation. The additions for 1928 and the retirements were estimated by the company at my request, and I have used their estimates. For the four year period 1925 to 1928, inclusive, the net additions total $950,301.59. The increase in the balance in the reserve for the same period amounts to $1,115,892.53, resulting in a deduction of $165,590.92."

See Table II, Exhibit 1.

Table II.

Minneapolis Street Railway Company Determination of Estimated Fair Value as of January 1, 1929.

Commission's fair value as of January 1, 1925		$26,787,228.11
Add: Net additions 1925		74,060.52
		$26,861,288.63
Deduct: Increase in Reserve for Accrued Depreciation:		
Credits, 1925	$604,678.40	
Debits, 1925	445,311.78	
Net increase		$159,366.62
Fair value—January 1, 1926		$26,701,922.01
Add: Net additions 1926		249,737.37
		$26,951,659.38
Deduct: Increase in Reserve for Accrued Depreciation:		
Credits, 1926	$579,413.88	
Debits, 1926	240,056.00	
Net increase		339,357.88
Fair value—January 1, 1927		$26,612,301.50
Add: Net additions 1927		381,703.70
		$26,994,005.20
Deduct: Increase in Reserve for Accrued Depreciation:		
Credits, 1927	$572,174.21	
Debits, 1927	189,567.41	
Net increase		382,606.80
Fair value—January 1, 1928		$26,611,398.40
Add: Net additions 1928 (estimated)		244,800.00
		$26,856,198.40
Deduct: Increase in Reserve for Accrued Depreciation:		
Credits, 1928 (estimated)	$568,261.23	
Debits, 1928 (estimated)	333,700.00	
Net increase		234,561.23
Estimated fair value—January 1, 1929		$26,621,637.17

Mr. Cooper further testified in reference to Table II.

"I have set my determination as to the estimated fair value of the Minneapolis Street Railway Company as of January 1, 1929. I have taken as my starting figure the fair value found by the Commission as of January 1, 1925, namely $26,787,228.11. . . . In order to bring my valuation down to January 1, 1929, I have added to it the net additions as reported by the company for the years 1925, 1926, and 1927, and at my request Mr. Stouse made an estimate of the gross and net additions for the year 1928. I have reduced the valuation year by year by the increase in the reserve for accrued depreciation which has accumulated from year to year. The figures for each year up to 1928 are the figures as shown upon the books of the company. . . . I have examined the method used by the company in bringing the figures down to date, and determining the net additions, and I think the methods should achieve reasonable results. However, there is always question of judgment involved as to whether or not a particular item should go to fixed capital or should be charged to operating expenses in any given year. . . . The net result of my process in bringing the valuation down to date has been for 1925 to add the net additions of $74,060.52, deduct the credit in the reserve during that year of $154,366.62. The figures are set out for each year, the process has been the same in each year, and I obtain for the estimated fair value as of January 1, 1929, of $26,621.637.17."

See Record pp. 78 to 80.

Mr. Cooper made no inspection of the property, had no data as to what the condition per cent is based upon, and his conclusion that the fair value of the Minneapolis Street Railway Company as of January 1, 1929, was $26,621,637.17 was arrived at by deducting the accrued depreciation from the fair value of the property, and the same argument that is now presented to the Commission was before the Commission at the time it made its order fixing the fair value as of January 1, 1925. The Commission at that time said:

"We reject the theory advanced by the city that the accrued depreciation on the property has increased by the amount of the

increase in the depreciation reserve balance since January 1, 1922."

It appears further from the evidence that, as a matter of fact, the amount that the company set up in its depreciation reserve is expended in the property and that the property is in public use and public service.

Mr. Bitney, the Commission's statistician, who was also sworn as a witness, pursuant to the Commission's instructions to make an investigation as to the matter here involved, made and filed his report—Railroad and Warehouse Commission Exhibit I—which was received in evidence and from which it appears:

"That the net additions to the Commission's fair value for the years 1925, 1926, and 1927, as set forth in the company's Exhibit 7, page 17, are correct as stated."

The items charged to property accounts to which exception is taken are as follows:

1. Charges to additions and betterments for a proportion of the costs incurred in renewing, in kind, from 17 to 45 per cent of the ties at various location—$5,342.55. In our opinion the entire cost of these particular renewals should be charged to the appropriate maintenance or accrued depreciation account.

2. The cost of law books and subscriptions to current periodicals during this 3-year period of $761.38. Under the present I. C. C. Classification of Accounts adopted by this Commission, this is chargeable to operating expenses.

3. The amount of $5,000 paid Sargent & Lundy for an engineering survey made in connection with pending negotiations for renewal of present water power leases which expire in 1937. Proper accounting requires that expenditures for preliminary surveys be held in a suspense account until a final determination has been made of the project in question. The city also objects to the inclusion of this item.

4. Due to erroneous credit for salvage recovered, the additions and betterments involved in the replacement of overhead feeder wires are understated in the amount of $768.27.

The net sum total of the amounts to which exception is taken and regarding which final disposition has not been determined, is less than $12,000.00. In disposing of the issues in this case

this amount may be disregarded, since the return upon the entire amount would be only $90.00.

Factors on Which the Company and the City Do Not Agree.

As stated at R. page 86, there are but three important items or factors advanced by the company to which the city does not agree. They are:

1. Rate of return.

2. The method and amount by which fair value now shall be reduced to allow for depreciation since January 1, 1925.

3. The estimated number of passengers the company will carry in 1929 and subsequent years.

Except as noted below, the city agrees with the evidence submitted by the company as to:

4. Net additions and betterments since January 1, 1925.

5. Operating revenues other than passenger revenue for 1929 and Nicollet avenue bus.

6. Non-operating income, except as to two items later discussed.

7. All operating expenses except a charge of $18,600 included in general expenses for legal service, valuation and cost of operating the Bryn Mawr bus.

8. Land values.

With reference to the above matters the following explanation is offered.

Depreciation.

Regarding the matter of annual depreciation charges to operating expenses and the sum deductible from the Commission's fair value as of January 1, 1925, plus net additions to January 1, 1929, the City contends as follows:

"Table II sets forth my judgment with respect to a rate base as of January 1, 1929. I have adopted as my starting point the finding by the Railroad and Warehouse Commission that the fair value of the street railway property of the Minneapolis Street Railway Company as of January 1, 1925 was $26,787,228.11. While there may be some difference of opinion as to this

figure, it is my judgment that nothing is to be gained at this time by opening the question of valuation.

"I have brought the Commission's fair value down to January 1, 1929, by the following process: I have added each year the net additions reported by the company and have deducted therefrom the increase in the reserve for accrued depreciation. The additions for 1928 and the retirements were estimated by the company at my request, and I have used their estimates. For the 4-year period 1925 to 1928, inclusive, the net additions total $950,301.59. The increase in the balance in the reserve for the same period amounts to $1,115,892.53, resulting in a deduction of $165,590.94.

"It seems obvious that if the sum, $568,261.23, established by the Commission as the proper amount to be collected annually, from the car riders, and included in operating expenses, measures the consumption of capital through depreciation during the year, that the increase in the balance in the reserve should measure the extent to which the property has depreciated during the period. If the property has not depreciated since January 1, 1925, then the amount which the company has set up for depreciation and included in operating expenses is excessive.

During the four years 1925 to 1928, inclusive, the company has included in operating expenses the sum of $2,273,044.96 for depreciation. During this period, the realized depreciation or retirements have amounted to $1,208,635.19. If the Commission does not deduct, in finding fair value, the increase in the reserve, then they must in fairness to the car riders, reduce the amount annually charged to operating expenses to an amount equal to the annual retirements."

[1] The contention of the city that the depreciation charges should be reduced to the average annual cost of retirements charged against the reserve account, is without justification. Under that assumption the annual depreciation charge and depreciation rate would be as follows:

	Depreciable Property Value	Property Retirement Charges † Amount	Percent of Depreciable Value
January 1, 1925	*$26,891,456	$445,312	
January 1, 1926	26,965,517	240,056	
January 1, 1927	27,215,254	189,567	
January 1, 1928	27,596,958	333,700	
Total 4 years	$108,669,185	$1,208,635	1.112%

* See page 113, Commission's Order, Vol. II.
† Per Table II, Cooper Exhibit 1.

The above tabulation shows that if the annual depreciation charge were reduced to a rate sufficient to cover retirement charges only, the annual average rate, based upon depreciable property values for a period of four years, would be reduced from an annual rate of 2.5 per cent as determined by the Commission in its order of July 3, 1925 (p. 113, Vol. II), 39 Ann. Rep. Minn. R. & W. C. 384, to an annual average rate of 1.112 per cent. Obviously, the last named annual depreciation rate is too low and cannot be justified.

During this 4-year period, the net credits—gross credits less retirement charges—to the depreciation reserve amount to $1,115,892 (City Ex. 1, Table II), or an annual average credit of $278,973. It is this net increase that the city contends should be deducted from the rate base in arriving at the fair value of the property for rate-making purposes. In other words, the city contends that the average condition per cent of the property as of January 1, 1925, should be adjusted so as to give effect to the additional depreciation that due to wear and tear from use and from added age has accrued since that date. They contend that the net increase in the depreciation reserve account is a proper measure of what that adjustment would be.

The net addition referred to amounts to $1,115,892, and is the equivalent of 4.06 per cent of the Commission's fair value—$27,492,730—as of December 31, 1927. In substance, the city contends that the average condition of 87 per cent found by the Commission in its valuation order (p. 60) should be reduced 4.06 per cent.

In the Duluth Street Railway case the Commission found the average condition of that property to be 83 per cent. Witness

Cooper (R.89) testified that recently in the Los Angeles Railway Company case, the engineers appearing for the company, the city, and the Commission agreed upon a 68 per cent condition.

It is claimed that the reconstruction serves as an equalizing factor in maintaining the property at a static condition per cent. In that connection I have prepared a statement which shows for each year the charges to accrued depreciation for retirements for the four general classes of property for the 6-year period 1922 to 1927, both inclusive.

Annual Depreciation—Road and Equipment.
For the 6-Year Period 1922 to 1927, both Inclusive.

Credit Balance	Way and Structures	Equipment	Power and Transmission	Total
1—As of Jan. 1, 1928	$3,073,222	$2,267,743	$2,183,054	$7,524,019
2—As of Jan. 1, 1922	2,387,085	1,615,990	1,533,849	5,536,924
3—Increase	$686,137	$651,753	$649,205	$1,987,095
Charges for property retired:				
4—1922 to 1927, 6 years	815,261	578,475	67,117	1,460,853
5—1 year	135,877	93,412	11,186	243,476
6—Original cost of depreciated property including overheads as of Jan. 1, 1928 ..	12,592,473	5,419,350	4,787,996	22,799,869
Per cent of original cost:				
7—Increase in depreciation reserve credits—6 years	5.45%	12.03%	13.56%	8.72%
8—1 year	.91%	2.00%	2.26%	1.45%
9—Original cost of property retired, 6 years	6.48%	10.67%	1.40%	6.40%
10—1 year	1.08%	1.78%	.23%	1.07%
11—Gross credits to accrued depreciation account—6 years	12.93%	22.70%	14.96%	15.12%
12—1 year	1.99%	3.68%	2.49%	2.52%

The cost of property retired during the above six years was greatly in excess of the average cost of property annually retired during the prior years of 1904 to 1921, inclusive. In spite of that fact, the retirements are only slightly above 1 per cent of the original cost. The purpose of this tabulation is to show that after assuming that all the property retired was replaced by new construction, the quantity so retired has been insufficient to maintain a static condition throughout this 6-year period of time, viz.: 87.9 per cent.

The theory, advanced by the city that the increase in accrued depreciation should be deducted from the rate base in arriving at the fair value, was considered and rejected by the Commission

in its previous order at page 103, 39 Ann. Rep. Minn. R. & W. C. 384, 438, wherein we said:

"We reject the theory advanced by the city that the accrued depreciation on the property has increased by the amount of the increase in the depreciation reserve balance since January 1, 1922. We believe that the property has been well maintained during this 3-year period, and that there has been practically no change in the amount of the accrued depreciation thereon."

In Simpson v. Shepard—Minnesota Rate Case, 230 U. S. 352, 57 L. ed. 1511, 33 Sup. Ct. Rep. 729, 48 L.R.A.(N.S.) 1151, Ann. Cas. 1916A, 18, decided June 9, 1913, Justice Hughes says:

"The property of the railroad corporation has been devoted to a public use. There is always the obligation springing from the nature of the business in which it is engaged—which private exigency may not be permitted to ignore—that there shall not be an exorbitant charge for the service rendered. But the state has not seen fit to undertake the service itself; and the private property embarked in it is not placed at the mercy of legislative caprice. It rests secure under the constitutional protection which extends not merely to the title, but to the right to receive just compensation for the service given to the public." (Citing of authorities) pp. 433, 434.

"(1) The basis of calculation is the 'fair value of the property' used for the convenience of the public. Smyth v. Ames, 169 U. S. 466, 546, 42 L. ed. 819, 849, 18 Sup. Ct. Rep. 418. Or, as it was put in San Diego Land & Town Co. v. National City, 174 U. S. 739, 757, 43 L. ed. 1154, 1161, 19 Sup. Ct. Rep. 804: 'What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public.' See also San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 47 L. ed. 892, 23 Sup. Ct. Rep. 571; Willcox v. Consolidated Gas Co. 212 U. S. 19, 41, 53 L. ed. 382, 395, 29 Sup. Ct. Rep. 192, 48 L.R.A.(N.S.) 1134, 15 Ann. Cas. 1034.

"(2) The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment, having its basis in a proper considera-

tion of all relevant facts. The scope of the inquiry was thus broadly described in Smyth v. Ames, *supra* (169 U. S. pp. 546, 547): 'In order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.' " pp. 434, 435.

In Railroad Commission v. Cumberland Teleph. & Teleg. Co. 212 U. S. 414, 53 L. ed. 577, 29 Sup. Ct. Rep. 357, decided February 23, 1909, Justice Peckham, says:

"If the onus rested upon the Commission to show these facts, it is evident that the obligation has not been fulfilled; but it is just here that the difficulty lies. It was obligatory upon the complainant to show that no part of the money raised to pay for depreciation was added to capital, upon which a return was to be made to stockholders in the way of dividends for the future. It cannot be left to conjecture, but the burden rests with the complainant to show it. It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and so to use it, or any part of it, as to permit the company to add it to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property, and, having collected it, to use it in another way, upon which the complainant would obtain a return and distribute it to its stockholders. That it was right to raise more money to pay for depreciation than was actually disbursed for the particular year there can be no doubt, for a re-

serve is necessary in any business of this kind, and so it might accumulate; but to raise more than money enough for the purpose and place the balance to the credit of capital upon which to pay dividends, cannot be proper treatment. The court below said it was impossible to find out from the books how much of this had been done, and it treated the fact as one to be explained by the Commission, and not by the complainant. In other words, while this fact was a material one, the onus was placed upon the Commission, and not the complainant, to show it. We think, on the contrary, that the obligation was upon the complainant. Now, although the books, it is said, do not show how much money collected for depreciation has been, in fact, used to increase the capital of the complainant, upon which dividends were paid to stockholders, yet still, even if the books do not show accurately, or even at all, what disposition was made of these moneys, at any rate the officers of the complainant must be able to make up some reasonable approximation of the amount, even if it be impossible to state it with entire accuracy; and this duty rests with the complainant, in order that it may discharge the duty devolving upon it to prove that the rates were not unreasonably high under Order No. 488, or, in other words, that they were unreasonably low under Order No. 552. It may be that the sum, if any, thus used, was not enough to affect the claim that the rates under discussion were unreasonably low." Pages 424, 425.

In its order of July 3, 1925, 39 Ann. Rep. Minn. R. & W. C. 384, the Commission found the total fair value of petitioner's property as of January 1, 1922, to be $25,419,789.11 (see page 101 of the Findings) and the net additions to property during the years 1922, 1923, and 1924 to be $1,367,439.00, thereby arriving at the fair value of $26,787,228.11 as of January 1, 1925. (See pages 102 and 103.)

It is not disputed that the net additions during the year 1925 total $74,060.52, during the year 1926 the sum of $249,737.37, and during the year 1927 the sum of $381,703.70, or a total of $705,501.59 for the three years (see petitioner's Exhibit 7, page 17). The city also accepts the petitioner's estimate of net additions for the year 1928 at $244,800, making total net additions of $950,301.59, for the four years.

As we have just stated, the city does not dispute the amount of these net additions but revives a former contention that the amount of the increase in the depreciation or renewal reserve during the 4-year period under consideration, amounting to $1,115,892.53, with 1928 estimated at $234,561.23, should be deducted from the above fair value, leaving $26,621,637.17 as the fair value January 1, 1929.

[2] This same argument, as the expert for the city admitted, was advanced by the city at the time of the valuation proceedings and after full consideration was rejected by the Commission. On page 102, of the findings of the Commission, the Commission reports that the net additions during the 3-year period, 1922 to 1924 inclusive, aggregate $1,441,612.41. After referring to other contentions the Commission stated:

"The city also makes the claim that the increase in the renewal reserve (depreciation reserve) during the 3-year period under consideration, amounting to $1,060,990.06 should be deducted from the above net addition, leaving $306.554.35 as the proper amount to be added to the Commission's fair value to bring it down to January 1, 1925." (At p. 438 of 39 Ann. Rep. Minn. R. & W. C.)

In disallowing this claim the Commission declared:

"We reject the theory advanced by the city that the accrued depreciation on the property has increased by the amount of the increase in the depreciation reserve balance since January 1, 1922." (At p. 438.)

In repudiating such theory, this Commission and the courts have held that the depreciation reserve or the charges on account thereof and actual depreciation are not one and the same thing. See findings, pages 110 to 113 inclusive. As has been stated by the Courts:

"The 'depreciation reserve fund' is merely a sum supposed to be set apart to take care of depreciation with a margin over. It is not as a matter of fact actually set aside but is really simply entered on the books and is in fact a mere matter of bookkeeping. It does not represent actual depreciation, but only what observation and experience suggest as likely to happen with a margin

over. The law, however, requires actual depreciation to be deducted."

Southern Bell Teleph. & Teleg. Co. v. Railroad Commission, 5 F. (2d) 77, 96, P.U.R.1926A, 6, 46.

See also New York Teleph. Co. v. Prendergast, 300 Fed. 822, 824, P.U.R.1925A, 491, 494, in which the Commission deducted the depreciation reserve from the fair value to reach the rate base. This was held to be error as a matter of law. In discussing the question the Court said:

"These accumulated charges are not a separate fund. The total bears no definite relation to the actual condition of the property; for one item may have been and was charged years ago against the cost of an article scrapped long since, while another was charged yesterday against one just entering upon its life of usefulness. In fact, the depreciation reserve is a piece of bookkeeping, a monthly charge against earnings, to provide means, not only of covering deterioration from use and time, but of minimizing, and only minimizing, future possible losses of any kind, from storm or fire to changes of fashion. The funds or credits thus reserved are, and always have been, expended in strengthening the company's useful property, but what particular property it is neither possible nor useful to ascertain. . . . To deduct from the fair value of plaintiff's property the entire book reserve for depreciation, in order to reach a rate base, was error of law. In point of fact the property had not depreciated that much; the Commission did not find any such depreciation."

The United States Supreme Court also refused to allow a deduction of depreciation reserve. Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 U. S. 276, 286, 67 L. ed. 981, P.U.R.1923C, 193, 43 Sup. Ct. Rep. 544, 31 A.L.R. 807.

[3] In other words, in ascertaining the fair value of the property, the Commissions and Courts do not take the depreciation reserve fund, or increases thereof, into consideration at all. There is no relation between the two.

In arriving at accrued depreciation, this Commission adopted the rule laid down by the Supreme Court of the United States in Pacific Gas & E. Co. v. San Francisco, 265 U. S. 403, 406, 68

L. ed. 1075, P.U.R.1924D, 817, 44 Sup. Ct. Rep. 537, wherein the syllabus reads as follows:

"In determining the amount deductible for accrued depreciation when valuing the property of a public utility for the purpose of testing the adequacy of rates during a period already elapsed estimates of competent experts *based on examination* of the plant subsequent to the depreciation are preferable to averages based on assumed probabilities."

In that proceeding the master had applied the "modified sinking fund method" in order to determine accrued depreciation which is based on estimated life of different structural units and assumed probabilities. The Court refused to permit accrued depreciation to be arrived at in such manner.

The same doctrine was affirmed in McCardle v. Indianapolis Water Co. 272 U. S. 400, 415, 71 L. ed. 154, P.U.R.1927A, 15, 29, 47 Sup. Ct. Rep. 144, wherein the Court declares:

"The testimony of competent valuation engineers who examined the property and made estimates in respect of its condition is to be preferred to mere calculations based on averages and assumed probability."

In our opinion the Commission should, and does, consider the wear and tear due to use and the deterioration due to increase in age, also the facts set forth in the table above relative to values retired during the past six years, and should find and make a reduction in the rate base of $696,044 for additional accrued depreciation. This sum is the equivalent of 2.5 per cent of $27,841,758, the Commission's fair value of depreciable property as of January 1, 1929. The Commission finds the fair value of the petitioner's property to be $27,041,486 as of January 1, 1929.

Estimated Number of Passengers—1929

The company's estimate of the number of revenue passengers for 1929 was 106,000,000 (Witness Strouse, R. 14); the city's estimate was 108,000,000 (Witness Cooper, R. 76).

The number of revenue passengers carried each year for the past nine years was as follows:

Revenue Passengers Carried.

Year	Number	Ratio to 1928	Decrease Under Previous Year	
			Number	Percent
1920	138,632,824	128.9		
1921	132,114,895	122.8	6,517,929	4.7
1922	135,088,545	125.6	*2,973,650	*2.2
1923	132,904,222	123.6	2,184,373	1.6
1924	126,492,460	117.6	6,411,762	5.1
1925	122,177,113	113.6	4,315,347	3.4
1926	113,168,178	105.2	9,008,935	7.4
1927	109,303,467	101.6	3,864,711	3.4
1928	†107,560,072	100.0	1,743,395	1.6

* Denotes increase.
† Actual for entire year 1928.

The Commission in its order of July 3, 1925, 39 Ann. Rep. Minn. R. & W. C. at p. 445, made the following comment and findings:

"The company's estimate of revenue passengers for 1925 under a 6-cent (prevailing) fare, was 118,472,883. A similar estimate made by the city was 121,434,071 revenue passengers. Under an increased rate of fare, the company estimated 113,733,925 revenue passengers. . . .

"A detailed study made by the Commission's engineer of revenue passengers carried monthly for the years 1913 to 1924, inclusive, indicates that the number of passengers reasonably to be expected for the year 1925 under the present rate of fare, is 121,890,000, and under an increased rate of fare 118,233,300. We accept the latter figure as the basis of our estimate for 1925."

It will be noted that the company estimated that an increase in fare would have the effect of reducing the number of revenue passengers approximately 5,000,000 and the Commission estimated the reduction on account of increase in fare at approximately 3,600,000. Since the Commission's increased fare did not go into effect until August 1, 1925, the full effect of the increased fare upon the number of passengers carried, is not reflected in that year. In 1926, the number of passengers carried decreased from 122,000,000 to 113,000,000, a decrease of 9,000,000 or 7.4 per cent. The actual number carried in 1926 was 733,925 less than the number estimated by the company.

The above table shows the decrease by years in the number of revenue passengers carried. A comparison of 1920 with 1928

shows there was a decrease from 138,632,824 to 107,560,072, or a decrease of approximately 31,000,000 revenue passengers. Witness Cooper (R. 87), in response to an inquiry, stated that if the fare were increased it would drive away car riders, and if a substantial increase was granted, the company would do well if they carried 106,000,000 passengers in 1929.

A report of the actual number of passengers carried in December, 1928, has just been received prior to January 21, 1929, which shows that the actual number carried in that month was 9,346,071, whereas, in the evidence submitted by the company in this case, it was estimated the company would carry 10,625,008. The 1928 actual as now reported is 107,560,072.

The above table of passengers carried during the past nine years and the testimony and evidence cited present the salient facts upon which the Commission may base its conclusion as to the prospective number of passengers that may be carried in 1929 and ensuing years.

A review of the past performance indicates that the company's 1929 final estimate of 105,000,000 passengers is a reasonable, if not a maximum, estimate. Reference to the preceding table shows that with the exception of 1922, there was a continuous decrease in the number of passengers carried each year, as follows:

	Decrease in Revenue Passengers	
	Thousands	Percent
1923 under 1922	2,184	1.6
1924 under 1923	6,412	5.1
1925 under 1924	4,315	3.4
1926 under 1925	9,009	7.4
1927 under 1926	3,865	3.4
1928 under 1927	1,743	1.6

To what extent the increase in fare was responsible for the reduction of 9,000,000 passengers in 1926, as contrasted with the previous year, may be surmised to some extent by comparing the decrease in that year with the decreases for other years. It will be noted that the decrease in 1926, when the increased fare was in effect, was more than double the decrease in the next preceding and subsequent years.

Assuming that in 1929 the reduction in the number of passen-

gers carried would not exceed the reduction in 1928 under 1927, viz.: 1.6 per cent, the estimate for 1929 would then be as follows:

Actual 1928	107,564,340
Reduction of 1.6%	1,721,029
Estimate for 1929	105,843,311

The above determination assumes the lowest per cent reduction experienced by the company over a 6-year period and provides no allowance for the effect that an increased fare may, and no doubt will, have upon the number of passengers that will be carried in 1929 or subsequent years.

In view of the facts disclosed by an analysis of past performance, it is our opinion that 105,000,000 is a reasonable and fair estimate of the number of revenue passengers the company may be expected to carry during 1929.

Net Additions and Betterments Since January 1, 1925

The company and the city have agreed upon the amount of net additions and betterments since January 1, 1925. As set forth elsewhere in this report, this department has made a careful and complete check and analysis of all expenditures made and charged to property and investment accounts during this period.

This audit and check was completed the latter part of December, 1928. Our analysis disclosed charges to property investment accounts aggregating approximately $12,000, which in our opinion should be eliminated and charged to operating expenses of accrued depreciation.

Operating Revenues

The city contends that Minneapolis earnings should be increased to include the profit secured from operations of the bus line on Nicollet avenue (R. 77). We were informed by Mr. Strouse that the estimated profit of $30,500 testified to by Witness Cooper was a correct estimated amount. The company had made no serious objections to the inclusion of this added revenue in the 1929 estimate of revenues. On page 12a of company Exhibit 7 there is included an amount of $156,469.57, or the total operating costs plus a 7½ per cent return on all other busses operated locally in Minneapolis.

The profit of $30,500 should be added to the revenues for 1928 and estimated revenues for 1929.

Non-Operating Income

For 1929, the non-operating income submitted by the company (Ex. 7, p. 6) amounts to $62,099. The city submits an estimate of $58,725, a reduction of $3,374. This difference is brought about through a proposed reduction in the interest rate on jointly used properties, amounting to $7,546, and an increase of $4,172 for interest on bank balances.

In our opinion, the company's figure of $62,099 should be allowed to stand without modification.

Operating Expenses

The city contends that the company's estimate for 1929 should be reduced by the amount of $18,600. The items subject to objection are as follows:

In the 1929 estimate the company has included an extra allowance of $10,000 for law expense and $10,000 for valuation expense, to cover expense it is assumed will be incurred in this proceeding. The city contends that these amounts should be reduced by the amount of $10,000, that the latter amount is sufficient to cover all the legal, engineering, and other costs that will be incurred in the prosecution of this case.

Confined to the legal and valuation expense incurred by the company in this case, there is just grounds for the city's contention. The costs incurred by the company in rate cases are extraordinary costs that in the past have run into large sums. The custom of the Commission has been to amortize these costs over a period of years. The costs incurred by the company in the previous case amounted to $393,824.77. In the Commission's order (p. 109), it was assumed that this expense should be amortized over a period of eight years; that the annual charge would amount to $50,000. Under that assumption the company might rightfully include a charge of $50,000 in 1929 for this expense, in addition to a proportionate amount of the costs that will be incurred in connection with the instant case.

In view of these facts, the 1929 charge of $20,000 should not be reduced.

[4] The city also suggests a reduction of $8,600, representing the cost of operating the Bryn Mawr bus line (R. 77), which it is assumed may be discontinued. Since the record contains no definite information in regard to the discontinuance of this bus line, the exclusion of its loss from operations is not justified. Witness Cooper testified that if it were not discontinued, then the $8,600 should not be deducted. (R. 77.)

For the reasons set forth above, the reduction of $18,600 which the city contends should be made in operating expenses, should not be allowed.

A comparison of the 1929 estimated operating expenses with the actual for 1928, taken from Exhibit 7, pages 12 and 12a, appears in the table below.

	1928 Actual	1929 Estimated	Increase 1929 over 1928 Amount	Percent
Maintenance of way and structures	$683,279	$650,279	$33,000*	4.84*
Maintenance of equipment	647,853	680,005	32,152	4.97
Power	548,482	609,698	61,216	11.24
Transportation	2,674,551	2,685,652	11,101	.04
Traffic	31,221	31,221	....	...
General and miscellaneous	745,984	767,123	21,139	.29
Transp. for investment cr.	28,235*	28,235*	....	...
Total	$5,303,135	$5,395,743	$92,608	1.75

* Indicates reduction or credit.

In the above comparison of 1929 with 1928 expense, it will be noted that the reduction in maintenance of way operating expense offsets the increase in maintenance of equipment expense. The $21,139 increase in general expense is due to the extra estimated allowance of $20,000 for legal and valuation expense previously discussed.

We have investigated the 1929 estimated charges for maintenance of way and structures, maintenance of equipment, and power. Mr. Cooper has also made an analysis and study of these estimated charges and found no cause for disagreement.

In the table below a comparison is made of maintenance costs in total and per car-miles:

Comparative Maintenance Costs Per Car Mile.

Maintenance of Way and Structures (Less Depreciation)	Expenses	Car-Miles	Cents Per Mile
1925	$339,113.83	17,028,201	1.99
1926	326,634.90	17,170,608	1.90
1927	347,483.40	17,219,618	2.01
1928*	399,364.34	17,273,862	2.31
Total	$1,412,596.47	68,692,289	2.05
4-year average	353,149.12	17,173,072	
1929†	366,364.30	17,311,000	2.11
Increase 1929 over 4-year average:			
Amount	13,215.18	137,928	.060
Per cent	3.74%	.80%	2.92
Equipment (less depreciation)			
1925	543,079.84	17,028,201	2.6608
1926	444,490.28	17,170,608	2.5887
1927	418,838.40	17,219,618	2.4323
1928*	429,241.47	17,273,862	2.4859
Total	$1,745,649.99	68,692,289	2.5412
4-year average	436,412.50	17,173,072	
1929†	461,412.50	17,311,000	2.6653
Increase 1929 over 4-year average:			
Amount	24,980.78	137,928	.1241
Per cent	5.72%	.80%	4.88%
Total maintenance of way and structures and maintenance of equipment:			
4-year average	789,561.00	17,173,072	
1929 estimate	827,757.00	17,311,000	
Increase 1929 over 4-year average	38,196.00		
Per cent increase	4.84%		

* 10 months actual, 2 months estimated.
† Estimated.

A comparison of 1929 estimated expense with the actual average for the 1925–1928 4-year period shows the estimated increase to be as follows:

	Increase 1929 Estimated Over 4-year Average	
	Amount	Percent
Maintenance of way and structures	$13,215	3.74%
Maintenance of equipment	24,981	5.72%
Total	$38,196	4.48%

Except to say that this was a reasonable estimate of maintenance expense for 1929, based upon the company's present program, the testimony of Witness Strouse offers no specific reason why the 1929 estimate should be greater than the average of previous years. Where there has been no material change in the price levels of materials and wage levels of employees, or

the class or volume of service rendered, the average for a period of from two to four years constitutes the most reliable data and measure available on which to predicate estimates for coming years. On that basis the company's estimate is $38,196 too high. However, there are offsetting amounts omitted from operating expenses that nevertheless should be given consideration.

The city's bill for street cleaning for 1928 was $8,000 in excess of the amount included in the 1929 estimate. Furthermore, the company would be entitled to include in the operating expense of 1929 and 1930 an amount of $50,000 each year to cover the unamortized valuation and rate case cost of 1925. This unamortized expense is just as legitimate a charge as any other expense chargeable to income. There was included in the 1929 estimate a charge of $20,000 for legal and valuation rate case expense. This amount is, therefore, more than $30,000 less than can be justified.

Considering the above omitted expense, it is our opinion that the company's 1929 estimate for maintenance of way and structures and maintenance of equipment charges should be allowed to stand without modification.

Reasonable Rate of Return

[5] The Commission in its order of July 3, 1925, 39 Ann. Rep. Minn. R. & W. C. 384, found a reasonable rate of return on the fair value of the property of the petitioner to be from 7 to 8 per cent and used in computing the rate of fare a return of 7½ per cent. This was confirmed in the order of this Commission on December 22, 1925, 39 Ann. Rep. Minn. R. & W. C. 450.

In view of our findings heretofore made as to the reasonable rate of return on the fair value of the property of the petitioner, and upon consideration of all of the evidence received before the Commission, we find that reasonable return on the fair value of the street railway property is not less than 7½ per cent. In fact, to find otherwise would be in effect to disregard the decisions of the courts that have passed upon the questions, including the case of the Duluth Street R. Co. v. Minnesota R.

& Warehouse Commission, decided December 27, 1924, 4 F. (2d) 543, P.U.R.1925D, 226, in which the court fixed the rate of 7½ per cent, also, the following cases: Southern Bell Teleph. & Teleg. Co. v. Railroad Commission, 5 F. (2d) 77, P.U.R. 1926A, 6. Rate—8%; Consolidated Gas Co. v. Prendergast, 6 F. (2d) 243, P.U.R.1925C, 744. Rate—8%; Kings County Light Co. v. Prendergast, 7 F. (2d) 192, P.U.R.1925C, 705, P.U.R.1925E, 5. Rate—8%; Brooklyn Union Gas Co. v. Prendergast, 7 F. (2d) 628, P.U.R.1926A, 412. Rate—8%; Citizens Gas Co. of Hannibal v. Public Service Commission, 8 F. (2d) 632. Rate—7.6%; New York & Richmond Gas Co. v. Prendergast, 10 F. (2d) 167, P.U.R.1925E, 19, P.U.R. 1926B, 759. Rate—8%; Springfield Gas & E. Co. v. Public Service Commission, 10 F. (2d) 252, P.U.R.1926C, 858. Rate —8%; Pacific Teleph. & Teleg. Co. v. Whitcomb, 12 F. (2d) 279, P.U.R.1926D, 815. Rate less than 7.5% confiscatory; Brooklyn Borough Gas Co. v. Prendergast, 16 F. (2d) 615, P.U.R.1927A, 200. Rate—8%; Interborough Rapid Transit Co. v. Gilchrist, 26 F. (2d) 912, P.U.R.1928D, 92. Rate— 8% indicated.

Justice Butler of the United States Supreme Court in the case of McCardle v. Indianapolis Water Co. 272 U. S. 400, 71 L. ed. 154, P.U.R.1927A, 15, 31, 47 Sup. Ct. Rep. 144, says:

"It is obvious that rates of yield on investments in bonds plus brokerage is substantially less than the rate of return required to constitute just compensation for the use of properties in the public service. Bonds rarely constitute the source of all the money required to finance public utilities. And investors insist on higher yields on stock than current rates of interest on bonds. Obviously, the cost of money to finance the whole enterprise is not measured by interest rates plus brokerage on bonds floated for only a part of the investment. The evidence is more than sufficient to sustain the rate of 7 per cent found by the Commission." And recent decisions support a higher rate of return. Lincoln Gas & E. L. Co. v. Lincoln, 250 U. S. 256, 268, 63 L. ed. 968, 39 Sup. Ct. Rep. 454; Galveston Electric Co. v. Galveston, 258 U. S. 388, 400, 66 L. ed. 678, P.U.R. 1922D, 159, 42 Sup. Ct. Rep. 351; Bluefield Water Works & P.U.R.1929C.

Improv. Co. v. Public Service Commission, 262 U. S. 679, 692, 67 L. ed. 1176, P.U.R.1923D, 11, 43 Sup. Ct. Rep. 675; Minneapolis v. Rand, 285 Fed. 818; Brooklyn Union Gas Co. v. Prendergast, 7 F. (2d) 628, 672, P.U.R.1926A, 412.

In view of the evidence submitted before the Commission and the decisions of the Courts, there is no escaping from the increase in the rate of fare.

Now, therefore, after giving careful consideration to all matters here involved, and in view of the past experience of the company as to the number of passengers carried, and using our best judgment as to the probable number of passengers to be carried, and the expense of operation for the year 1929, we have reached the conclusion and found that the fair rate of fare to be charged by the Minneapolis Street Railway Company for the carrying of passengers within the city of Minneapolis, Fort Snelling Reserve included, of 10 cents cash and 6 rides to be evidenced by tickets or tokens to be sold for 45 cents will not yield to exceed a reasonable return on the fair value of the property of the Minneapolis Street Railway Company.

Jacobson, Commissioner, dissenting: The far-reaching effect of this decision is, of course, of first importance to the car riders of the Twin Cities and the public utility involved, by reason of which the matter has been given most careful consideration by the Commission.

After such consideration by all members of the Commission, I am unable to agree with the majority order herein for several reasons, the most important of which I will comment upon herein. I cannot fail to find that an increase in fare is imminent, but not to the extent found necessary by the majority order.

First of all, it is common knowledge that property values have decreased considerably since the 1925 valuation of the street railway property by this Commission. In the instant case neither the city nor the company have given consideration to decreased land values. Such land value in my opinion should be considered and decreased to the present land values of other property in this locality before new rate of fare is promulgated,

and I am at a loss to understand why the city did not offer any evidence at the hearing as affecting the real estate valuations in the city of Minneapolis.

Secondly, the estimate of passengers to be carried in 1929 and subsequent years is a matter entirely of opinion and conjecture. Since the erection of the new Auditorium building, Minneapolis has had an increasing number of public gatherings and conventions, which has already had an effect upon street railway revenues during the summer months, and with expected further development of this class of traffic the street railway company will substantially profit thereby. Therefore, while an increased rate of fare will undoubtedly result in a decreased number of passengers carried, the decrease in my opinion will be temporary. I further believe street railway traffic in Minneapolis has reached a point where the percentage of decrease will not be so great that it cannot and will not be offset by this new class of convention traffic which, it must be remembered, is largely a cash fare in lieu of token transportation.

For these reasons alone I believe my position well taken and that a cash fare of 10 cents and a token rate of 7 for 50 cents will provide sufficient revenues for the continued efficient operation of the Minneapolis Street Railway Company.

WISCONSIN RAILROAD COMMISSION.

JOHN DIEDRICH et al.

v.

CITY OF KAUKAUNA.

[U-3775.]

Municipal plants — Authority to extend service — Status as utility.

1. A municipal plant empowered by a statute to extend its service outside of its borders assumes in such territory the same status as that of a privately owned utility and is governed by all of the supervisions of the law applicable to the latter, p. 615.

P.U.R.1929C.

Municipal plants — Indeterminate permit — Antiduplication agreement.

2. A municipal plant operating outside of its borders in a territory for which a private utility holds an indeterminate permit to render service may extend its service only as the agent and with the permission of the private utility and cannot be compelled to extend service without such consent in violation of an antiduplication agreement for patrons desiring merely cheaper rates, p. 615.

[May 4, 1929.]

COMPLAINT of certain individuals against the failure of an electric utility to extend service; complaint dismissed.

By the **Commission:** The petition in the above entitled matter is signed by John Diedrich and seventy-six others and requests that permission be granted to the city of Kaukauna, through its electrical department, to construct electric lines and furnish electric service to the residents of the town of Vanden Brook, Outagamie county.

A hearing was held at Appleton February 5, 1929. Joseph Lafevre appeared for the petitioners and for the town of Vanden Brook; H. F. Weckwerth for the Kaukauna Electrical and Water Department, and H. H. Benton for the Wisconsin-Michigan Power Company.

The testimony shows that on December 5, 1911, the town board of the town of Vanden Brook granted a permit to the Wisconsin Traction, Light, Heat & Power Company, predecessor in title to the Wisconsin-Michigan Power Company. This permit is as follows:

"We, the undersigned, constituting the board of supervisors of the town of Vandenbrook, county of Outagamie, Wisconsin, hereby consent that the Wisconsin Traction, Light, Heat & Power Company, a Wisconsin corporation, its successors and assigns, may occupy any highway, street, alley, lane, park, or public ground in said town for constructing, maintaining, and operating lines with all necessary wires, conduits, and appurtenances for the purpose of supplying light, heat, power, or signals to any building, manufactory, industry, or public or private house in said town and for the purpose of conveying electric current into and through the said town of Vandenbrook for light, heat, power,

or signals, providing, however, that no permanent injury is done to any such highway, street, alley, lane, park, or public ground.

"Dated this 5th day of December, A. D., 1911.

"As supervisors for the town of Vandenbrook,

A. J. Vandenberg,
Joe Wildenberg,
H. C. Bongers."

Thereafter, the Wisconsin-Michigan Power Company, or its predecessors in title, furnished electrical service in the town of Vanden Brook to the village of Kimberly bridge in 1913; to John Stein in 1915; N. Nooyen in 1916; to Jacob Demerath in 1917, and to Jacob Demerath at another location in 1919. All of the above customers have been continuously served up to the present time. Service was also extended to William Verhagen in 1919, but this service was discontinued in 1922. Thereafter, the company made various extensions of service in this town so that at the present time it has seventeen customers in the town. The permit granted to the predecessor of the Wisconsin-Michigan Power Company was duly approved by the county board of Outagamie county and the Wisconsin Highway Commission.

On March 27, 1919, the town board of the town of Vanden Brook granted a permit to the city of Kaukauna as follows:

"This permit granted this 27th day of March, 1919, grants to the city of Kaukauna through its electrical department, hereinafter called the Power Company, permission to construct and maintain poles and wires along any public highway in the town of Van Den Brook which the Power Company may at any time deem advisable to construct, to furnish electrical service to owners of property in the town of Van Den Brook, provided that the Power Company construct and maintain such lines in accordance with Chapter 313, § 1329A of the Laws of Wisconsin governing such construction.

A. J. Vandenberg,
John Diedrich,
John Van Den Heuvel."

Thereafter, in December, 1919, the city extended service to John Van Ryt and John Van Vonderen, and from time to time ex-

tended its lines in the town so that at present it is serving twenty-eight customers in the town of Vanden Brook.

In 1926, there were conferences between the management of the city of Kaukauna's electrical department and representatives of the Wisconsin-Michigan Power Company concerning the division of territory in various towns in the vicinity of Kaukauna where a dispute as to the right of the various utilities to serve had arisen. The Commission was consulted informally with respect to these territorial arrangements and indicated to the parties that under its interpretation of the utility law a utility holding an indeterminate permit in a town may permit another public utility to render service in a portion of that town as its agent, providing of course, that adequate service at reasonable rates is thereby provided for the inhabitants of the town, which the utility holding the indeterminate permit is under obligation to serve. It appears that the territorial agreements then made between the electrical department of the city of Kaukauna and the Wisconsin-Michigan Power Company, including the town of Vanden Brook and the operations of the respective utilities in this town, were definitely established. The city of Kaukauna is not now before the Commission seeking a certificate of public convenience and necessity authorizing its operation in the town of Vanden Brook, but on the hearing indicated its adherence to the agreement providing for a division of the territory. However, it indicated its willingness to comply with any order of the Commission requiring the extension of its lines in said town.

Some of the petitioners have discussed with the Wisconsin-Michigan Power Company the question of extending its lines for their service, and that company has indicated its willingness to extend service in the portions of the town reserved to it in the territorial agreement under its lawful schedules and rules.

The petitioners apparently are dissatisfied with the rules and rates of the Wisconsin-Michigan Power Company, as applied to their situation, as they understand them, and believe that the desired service could be furnished to them by the city of Kaukauna on more favorable terms.

[1, 2] It is clear from the testimony and evidence that the

Wisconsin-Michigan Power Company enjoys an indeterminate permit in the town of Vanden Brook, and that the permit granted to the city of Kaukauna did not have the effect of endowing the city of Kaukauna with an indeterminate permit in said town, inasmuch as no certificate of public convenience and necessity was applied for or issued by this Commission. By § 66.06, paragraph (12) a city owning its own electrical plant is authorized to extend its plant or equipment to serve persons or places outside of its corporate limits. Whether this statute merely empowers a municipal utility to extend its lines outside of its borders subject to obtaining the right to serve in such outside community in the manner prescribed by statute for public utilities, or whether it grants a municipality the absolute right to extend its lines in an adjoining community, irrespective of the presence therein of another operating utility or of action by the town board granting authority therefor, has not been authoritatively passed on by the courts of Wisconsin. This Commission has consistently taken the position that a municipality operating a public utility which furnishes service beyond its own borders is, with respect to such service, governed by all of the provisions of the public utility law applicable to privately owned utilities, and that such municipal utility may not extend its lines into a town where there is in operation a privately owned utility under an indeterminate permit without first securing from this Commission a certificate of public convenience and necessity.

We conclude, therefore, that the city of Kaukauna has no rightful authority to furnish service in the town of Vanden Brook, except as the agent of the Wisconsin-Michigan Power Company which holds an indeterminate permit in that town. Inasmuch as the Wisconsin-Michigan Power Company stands ready to extend service to all of the petitioners in this proceeding in accordance with the rules and rates lawfully applicable and on file with this Commission, there appears to be no ground for requiring this company to arrange for the extension of service by its agent, the city of Kaukauna, to the petitioners. If the petitioners herein are of the opinion that the schedules of the Wisconsin-Michigan Power Company covering the conditions under which extensions of service will be made and the rates

applicable thereto are in any respect unreasonable or unlawful, it is their privilege to file a petition with the Commission, in which event the matter will be heard and determined in the usual manner. Similarly, if the Wisconsin-Michigan Power Company should, upon proper application therefor, fail to extend its lines to the petitioners in accordance with its lawful rates and rules, this Commission has authority upon petition of the aggrieved parties to require such an extension of service.

The Commission finds that the Wisconsin-Michigan Power Company holds an indeterminate permit for furnishing electric service in the town of Vanden Brook, Outagamie county, and that the city of Kaukauna does not hold an indeterminate permit in said town.

The Commission further finds that the agreement dividing the territory of said town between the Wisconsin-Michigan Power Company and the city of Kaukauna is not inconsistent with the public interest.

It is, therefore, *ordered* that the petition herein be and the same is hereby dismissed.

CALIFORNIA RAILROAD COMMISSION.

RE COAST COUNTIES GAS & ELECTRIC COMPANY.

[Decision No. 20809, Application No. 15315.]

Security issues — Refinancing — When allowed.

The Commission will not permit a public utility to refinance its properties because the reproduction cost new might exceed the original cost which the Commission has previously permitted to be capitalized through the issue of stocks and bonds.

[February 20, 1929.]

APPLICATION of a utility to issue convertible preferred callable stock in exchange for second preferred noncallable stock; denied.

Appearances: Pillsbury, Madison, & Sutro, by Marshall P. Madison, and M. D. L. Fuller, for applicant; Alma M. Myers for Amy H. Myers and Hattie Davis Tenant, protestants.

By the **Commission:** Coast Counties Gas & Electric Com-

pany asks permission to issue 1,000,000 of its 6 per cent convertible cumulative preferred stock, callable at $102.50 per share in exchange for its noncallable $1,000,000 of 6 per cent cumulative second preferred stock now outstanding.

Coast Counties Gas & Electric Company was organized March 20, 1912. Prior to the effective date, March 23, 1912, of the Public Utilities Act, the company issued $1,000,000 of common stock and $1,000,000 of preferred stock. By Decision No. 1124, dated December 13, 1913 (Vol. III. Cal. R. C. R. 1012), the Commission denied without prejudice the company's application to issue and sell $200,000 of its preferred stock. The application was denied on the ground that there was insufficient equity to support a $1,200,000 preferred stock issue. Thereafter the company amended its articles of incorporation and changed the then outstanding preferred stock into a second preferred stock and provided for the issue of a first preferred stock. The company on November 30, 1928, reported outstanding $3,663,700 of 6 per cent cumulative first preferred and $83,060 par value of such stock, subscribed for but not issued on that date. The issue of all of the first preferred stock was authorized by the Commission.

The company's articles of incorporation, as they now read, provide that the amount of capital stock of the corporation shall be $7,000,000 and the number of shares into which said capital stock is and shall be divided is 70,000 shares of the par value of one $100 each. Fifty thousand of such shares are and shall be first preferred stock; 10,000 of said shares are and shall be second preferred stock, formerly known and designated as original preferred stock; and the remaining 10,000 shares are and shall be common stock. It is now proposed to amend the company's articles of incorporation so as to provide for an authorized stock issue of $7,000,000, divided into 70,000 shares of the par value of $100 each, of which 50,000 shares are and shall be first preferred stock, and 10,000 shares are and shall be 6 per cent convertible preferred stock and 10,000 shares are and shall be common stock. It is further proposed to amend the company's articles of incorporation so as to provide for the conversion of the 6 per cent convertible preferred stock at the option of the

holder into Class "A" common stock of the Pacific Public Service Company, a Delaware corporation, upon presentation and surrender, accompanied by duly executed instruments of assignment and transfer in forms satisfactory to the corporation, at the corporation's office in San Francisco, California, of the certificates of stock to be converted, at any time prior to ten days before any redemption date which may be fixed by the board of directors, at the rate of 1 share of said 6 per cent convertible preferred stock of the Coast Counties Gas & Electric Company for 4 shares of the Class "A" common stock of the Pacific Public Service Company.

It is further proposed to amend the articles of incorporation of the Coast Counties Gas & Electric Company so as to provide for the redemption of all of the 6 per cent convertible preferred stock at the option of the company on any dividend date upon not less than thirty days' notice published in San Francisco, upon the payment to the owner or holder thereof the sum of $102.50 per share, plus any accrued dividends.

In this connection it might be said that the company's first preferred stock may be called for payment and redemption by the corporation at its option at any time on the payment to the owner and holder thereof of the par value thereof, plus accrued dividends. The articles of incorporation of the company, as they now read, make no provision for the redemption of the company's second preferred stock.

Since the rendering of Decision No. 1124, dated December 13, 1913, *supra,* the Commission has from time to time been called upon to review the rates of the Coast Counties Gas & Electric Company, and in so doing, made valuations of the company's properties and established rate bases (Decision No. 12762, 24 Cal. R. C. R. 69, P.U.R.1924C, 415; and Decision No. 9840, 20 Cal. R. C. R. 952). If to the rate bases heretofore fixed by the Commission, one adds the net cost of additions and betterments, as shown by the company's reports filed with the Commission and its current and other assets as of November 30, 1928, one obtains a total of about $7,118,517. Against this there is outstanding in the hands of the public $1,266,900 of bonds, $607,000 of current and other liabilities, and a de-

preciation reserve of $1,152,945. Deducting the liabilities and the reserve from the $7,118,517, leaves an equity of $4,091,672 for applicant's outstanding stock. Deducting the outstanding first preferred stock, $3,663,700, from the $4,091,672 leaves an equity of $427,972 for the holders of the outstanding $1,000,000 of second preferred stock.

It appears that, during 1928, A. E. Fitkin & Company, Dean Witter & Company and associates, acquired the outstanding common stock, the outstanding second preferred stock and 8,133 shares of the outstanding first preferred stock of the Coast Counties Gas & Electric Company. The stock they now own represents approximately 50 per cent of the outstanding stock of Coast Counties Gas & Electric Company.

It is of record that while the company asks permission to substitute its 6 per cent convertible preferred stock, callable at $102.50 per share for its outstanding second preferred stock, that there is no present intent to call the 6 per cent convertible preferred stock. The arguments made in favor of the granting of the application rests upon the assumption that the distribution of the $1,000,000 of stock in question amongst the company's consumers will improve the market value of the company's first preferred stock, and that a higher price can be obtained for a second preferred stock, if convertible into another stock and callable at $102.50 per share, than if the articles of incorporation do not so provide. It is clear, however, that the distribution of the $1,000,000 of stock will not bring any moneys into the treasury of the company, for the reason that such stock is now outstanding and that if it is sold and distributed, the moneys realized from the sale will go to the present owners of the stock. As to improving the market value of the first preferred stock, the record shows that such stock is now selling at around $98 per share. The stock is callable at the option of the company at $100 per share. In view of this provision one can not expect the market value of the company's first preferred stock to greatly exceed the call price. The company during the past few years has encountered no difficulty in selling its first preferred stock.

Protestants urge that applicant should not be permitted to issue a 6 per cent convertible stock, callable at $102.50 per share,

for the reason that such issue jeopardizes the investment in the company's first preferred stock; that the corporation has not received in money or money's worth, full value for its outstanding second preferred stock, and that to call it at $102.50 per share would deplete the assets of the corporation; that the first preferred stock was sold on representations that the second preferred stock of the compaany is noncallable, and that the proposed amendment to the company's articles of incorporation would in effect permit a reduction in the capital stock of the corporation in a manner not permitted by the laws of this state. Applicant's officers reply that there is no present intent to call the 6 per cent convertible preferred stock if this application is granted. Subsequent to the hearing, counsel for applicant informed us that applicant was willing to stipulate or agree with the Commission, that before calling the stock in question, the matter would be submitted to the Commission for its approval. It is admitted, however, that if the stock is eventually called through borrowed funds, that the payment of interest on the loan ranks ahead of the payment of dividends on the first preferred stock and that in case of liquidation the payment of the loan would take precedence over the distribution of any assets to the holders of the company's first preferred stock.

We have considered the testimony submitted in this proceeding and have reviewed our decisions affecting Coast Counties Gas & Electric Company. We do not believe that the granting of this application is in the public interest or is equitable to the holders of the company's first preferred stock.

It is only by giving undue weight to the reproduction cost new less depreciation of applicant's properties that full equity can be shown behind the company's second preferred stock. In no instance has the Commission permitted a public utility to refinance its properties because the reproduction cost new might exceed the original cost which the Commission theretofore permitted to be capitalized through the issue of stock and bonds. While the original cost of some of applicant's properties is not available, we believe that the rate bases heretofore established by the Commission for applicant, plus the net cost of additions and betterments and net current assets, presents the maximum

figures which should be recognized for capitalization purposes. On this basis the equity for the second preferred stock is such that we can not authorize its refunding, through a new class of stock which does not increase the equity behind such stock and which might prove prejudicial to holders of the company's first preferred stock.

TEXAS COMMISSION OF APPEALS.

PRODUCERS' REFINING COMPANY et al.

v.

MISSOURI, KANSAS & TEXAS RAILROAD COMPANY OF TEXAS.

[No. 995–5160.]

(13 S. W. (2d) 679.)

Commissions — General character — Quasi-judicial function.

1. The Commission, although not a formal part of the judiciary system, nevertheless has functions which are quasi judicial and its orders are like judgments of a court, p. 623.

Appeal and review — Collateral attack.

2. All courts are courts of limited jurisdiction, but once they hear and determine a matter within their jurisdiction, the judgment becomes final as against all collateral attacks, p. 623.

Appeal and review — Commission order — Collateral attack.

3. Once a Commission hears and determines a matter within its jurisdiction its judgment becomes final as against all collateral attack, and it can be set aside and vacated only by appropriate and direct appellate proceedings, p. 623.

Rates — Reasonableness — Effect of Commission order.

4. A Commission order expressly affecting rates of a common carrier necessarily implies a finding by the Commission that such a rate is neither unreasonable nor discriminatory, p. 623.

Appeal and review — Proper procedure — Constitutional provision.

5. The framers of a state constitution in authorizing a Commission, and the legislature in creating it, were held to contemplate that its chief function would be to fix rates binding alike upon carrier and shipper, and subject to appeal or review only in the mode expressly pointed out in the statute, p. 624.

[February 13, 1929.]

APPEAL from decree of court of civil appeals reversing a judgment in favor of a refining company originally attacking the rates of a railroad company; decree of court of civil appeals affirmed. See, also, 13 S. W. (2d) 680.

Appearances: Callaway & Reed, of Dallas, Phillips, Trammell & Chizum, of Fort Worth, James W. Finley, of Chanute, Kansas, and Warren T. Spies, of Bartlesville, Oklahoma, for plaintiffs in error; A. H. McKnight and T. D. Gresham, both of Dallas, G. B. Ross, of Galveston, Goree, Odell & Allen, N. H. Lassiter, and Fred L. Wallace, all of Fort Worth, Claude Pollard, Attorney General, and Joe S. Brown, Assistant Attorney General, for defendants in error.

Speer, J.: The opinion of Chief Justice McClendon for the court of civil appeals of the Third District [Missouri-Kansas & T. R. Co. v. Railroad Commission, 3 S. W. (2d) 489] is an admirable statement of the principles of law which govern this case, and we approve the reasoning and conclusions announced by him. Little or nothing can be added to what he has said.

[1-4] The orders of the Railroad Commission are to be likened to the judgments of courts. While the Commission is not a part of our judiciary system, nevertheless its duties are quasi judicial, and its functions, in many respects, are those of a court. Aransas Harbor Terminal R. Co. v. Taber (Tex. Com. App.) 235 S. W. 841; Texas R. Commission v. San Antonio Compress Co. (Tex. Civ. App.) 264 S. W. 214, writ refused; Missouri, K. & T. R. Co. v. State (Tex. Civ. App.) 275 S. W. 673. Whether it be treated as a tribunal of general or limited jurisdiction, the sanctity of its orders is the same. All of our courts are courts of limited jurisdiction, but, once they hear and determine a matter within their jurisdiction, the judgment becomes final as against all collateral attacks. It can only be set aside or vacated by some direct attack as by appeal or proceeding to vacate. The order of our Railroad Commission within the limits of its jurisdiction is exactly analogous. It is the one tribunal with power to make rates affecting common carriers. When it establishes a rate, it necessarily finds that such rate is neither unreasonable nor discriminatory. The order, therefore,

is not in violation of, but in exact keeping with, the requirements of the Constitution and statute. To hold as we are urged to hold by the plaintiffs in error would be to deny that any tribunal can establish a lawful rate in any given instance as against a subsequent claim that such rate is in violation of the requirements of reason and fairness. Such rules would bring about chaotic results and leave rates to be determined at any time their validity might be called in question, in any court having jurisdiction of the amount involved in the particular controversy. No rate would be legal in the sense that any carrier would be bound to respect it, or shipper to pay it. Such a rule is too precarious.

[5] The framers of the constitution, in authorizing a Railroad Commission, and the legislature, in creating it, clearly contemplated that its chief function would be to fix rates binding alike upon carrier and shipper, subject to revision only in the mode expressly pointed out in the statute. That method is not followed if we permit a rate once duly established by the Commission to be attacked at will by any person affected. The remedy for an erroneous rate once established by the Commission is by a new rate either by the Commission itself, on the one hand, or by application to the district court as provided by statute.

We, therefore, recommend that the judgment of the court of civil appeals be in all respects affirmed.

Cureton, C. J.: Judgment of the court of civil appeals affirmed, as recommended by the commission of appeals.

P.U.R.1929C.